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ABSTRACT

This book chronicles the history of school finance reform in Texas between 1968 and 1995. Specifically, the book focuses on the substantial changes in the method of funding Texas public schools, aimed at creating a more equitable system of educational opportunity. The author, Dr. Jose A. Cardenas, founded the Intercultural Development Research Association, which is dedicated to the principle that all students are entitled to equal educational opportunities. Dr. Cardenas has been actively involved in school finance reform since the early 1970s when he was superintendent of the Edgewood Independent School District, a poor Mexican American district in San Antonio, and when the historic Rodriguez vs. San Antonio ISD litigation (involving Edgewood) was settled. The book begins with a description of the Texas system of school finance from 1950 through 1973, focusing on its major flaw--"local enrichment"--and on myths and misconceptions of school finance. The remainder of the book details court cases, legislation, and advocacy efforts and concludes with the current status of school finance reform. Dr. Cardenas' recollections, impressions, and opinions are substantiated by a collection of documents compiled during the 27-year period that includes correspondence and memoranda, reports of meetings and conferences, financial records, legal records, and publications. The book contains 159 references on school finance, a list of 142 court cases, and an index. (LP)

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Texas School Finance Reform

An IDRA Perspective

José A. Cárdenas, Ed.D.

Intercultural Development Research Association

1997

TEXAS SCHOOL FINANCE REFORM:
AN IDRA PERSPECTIVE

Cárdenas, José A., Ed.D.

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First Edition

DEDICATION

To the INTERCULTURAL DEVELOPMENT RESEARCH ASSOCIATION (IDRA) for its commitment to children and its 23-year effort in the improvement of educational opportunities through school finance reform, and

To the present and past MEMBERS OF THE BOARD of IDRA for their unwavering support and generosity,

To the STAFF OF IDRA for their continuous efforts in behalf of children, and

Very specially, to executive director MARIA "CUCA" ROBLEDO MONTECEL, who provided the motivation, encouragement, support and assistance for the development of this publication. In my 46 years in education, I have found no person with a greater love of and dedication to children.

Con mucho cariño,
José A. Cárdenas

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I extend my appreciation to Ms. Sarah Aleman, IDRA Computer Specialist, who processed most of the documents found in this publication. Her expertise in locating, retrieving and editing files provided valuable assistance in the insertion of IDRA and legal materials into the publication, and

To Ms. Lucy Estrada, secretary to the executive director and board of IDRA, who provided me with consistent and dependable assistance during the development of this manuscript, and

To Alston Russell for her assistance in proofreading the manuscript, attorneys Robert J. Myers and Al Kauffman for their review and recommendations on the litigation chapters, Craig Foster for editing the Property Tax Equity Chapter, Dr. Sally Andrade for editing the early chapters and Dr. María "Cuca" Robledo Montecel for reviewing the entire document.

To Dr. Albert Cortez, director of the IDRA School Finance Project. Achievements in school finance reform in Texas during this period can be attributed to his expertise in the subject, his insights into the political processes and his extensive participation in the formulation and implementation of equalizing alternatives. His efforts have resulted in a significant increase in educational opportunities for the children of Texas.

I extend similar appreciation to Albert Kauffman and the staff of the Mexican American Legal Defense and Educational Fund and to Craig Foster, the Equity Center and its staff for their contribution to the Texas school finance reform effort.

JAC

PREFACE

In the 27-year period between 1968 and 1995, there was a substantial change in the method of funding public schools in Texas. In general, the changes reflect a movement toward a more equitable funding system which provides a stronger fiscal foundation for equality of educational opportunity.

Judging by the number of inquiries about this change being received at our IDRA offices, historians, sociologists, political scientists and other social scientists have a strong interest on the who, what, when and how of the Texas reform. Unfortunately, there is little public information available on the catalytic forces responsible for the reform. Little is known about who did what during these 27 years of change.

Not surprising, in the absence of accurate information, a substantial amount of erroneous information is surfacing concerning actors and roles during the period of reform. Persons who performed in trivial roles are being credited with leadership roles; persons who made substantial contributions are being ignored.

In this publication, the author purports to provide extensive information on the reform of public school financing in Texas. The author participated in the reform movement, from the preparation for the trial of *Rodriguez v. San Antonio ISD*, to the enactment of the current statutes for the funding of schools.

The author's recollections, impressions and opinions are strongly substantiated by an organizational collection of documents compiled during the entire 27-year period. These documents include correspondence and memoranda, reports of meetings and conferences, financial records, legal records and publications. When appropriate, references have been made to these sources in the publication.

We trust that this information will be useful not only for historical purposes, but that it can provide a blueprint for persons and groups interested in bringing about future reform in schools and other social institutions.

José A. Cárdenas
Intercultural Development Research Association
San Antonio, Texas
January 1997

TEXAS SCHOOL FINANCE REFORM: AN IDRA PERSPECTIVE

Fighting the Good Fight

FOREWORD

Only an indefatigable optimist—which José Cárdenas clearly is—could have undertaken a task as ambitious as a history of Texas school finance reform. And only a true story-teller—which José clearly is as well—could have pulled it off. The subject is Texas-sized, which is reflected in the book's length and heft as well as the 27 year time period it covers. In less capable hands it would be as dull as a long stretch of West Texas highway on a hot summer day. Yet even as José tells the full story, in all its richness and detail, he tells it with the same intensity and enthusiasm he brought to the reform effort itself.

Indeed, it may be best to think of this imposing tome as a "professional" autobiography. It is, to be sure, professional in the fullest sense of that term (it "professes," and what it professes is an abiding belief in simple equity) and it is autobiographical, as it must be to tell the story. The fact is that José and Texas school finance reform are inextricably bound together, just as José's institutional creation, Intercultural Development Research Association, which, among other things, was the fiduciary and administrative home for his prolonged school finance struggle. Indeed, the book is aptly subtitled An IDRA Perspective, for it was under IDRA's umbrella that the marvelous cast of characters in this tory assembled, and it was to IDRA that the various grants were made that underwrote the work of José and his colleagues.

In this spirit of complete and full disclosure, it is important to note what this book is not as well as what it is. This is not a book for the general reader (Tom Clancy and John Grisham are safe). Neither is it, however, a book for the expert only. Anyone who cares to learn more about one of the great education reforms of our time—both an intellectual and political adventure—will profit from this book. Not surprisingly, José sees his efforts as more than a history; it is also a blue print, one that he hopes will have utility for other school finance reformers. No doubt it will. And it offers a number of more general themes that are worth pondering as well. The profound irony of the Texas State Teachers Association (TSTA), the Texas Association of School Administrators (TASA) and the Texas Association of School Boards (TASB) opposing school finance reform is itself a cautionary tale.

As well, the advent of modern computers, something we take for granted today, played a key role in IDRA's success. José's description of IDRA's first computer purchase in 1975 brings back shared memories: "marketed as a "portable computer," it required at least two strong persons to move it . . . and there was no commercial software for it at the time." The absence of data management capabilities had ham-strung early school finance reform efforts, and it is important to be reminded of this. It was José's great insight that the admonition "know the truth and it will make you free" was not a platitude but lay at the heart of any successful school finance litigation strategy.

No one that I know of devoted more of himself to school finance reform than José. And happily it has paid off, if not in full, at least in large measure. José was—and is—a trail blazer, a pioneer. As revealed in this volume, José's enduring accomplishment is to give us the full sweep and scope of the effort in which he was a principal actor. But this gets ahead of the story.

"Backwards reels the mind," as Pat Moynihan says, and that is what good history is all about; it reminds us of how far we have come and what obstacles had to be surmounted. As José reminds us in the opening pages, schools have *always* been inequitably funded in Texas, from the time of European contact to the present (and not just in Texas, we might remind ourselves.) Indeed, from this long historical perspective, what is remarkable is that there was any change at all. To many school finance scholars and reformers the task of school finance reform appeared *Quixotic*, a tilting at windmills that would daunt Cervantes himself.

The late Charles Benson, noted school finance authority at UC Berkeley (and admirer of José) captured this sentiment exactly when he was asked what it would take to achieve true school finance reform in California. "It will only happen when the citizens of California march on Sacramento and demand a tax increase," he intoned. (Those of us who loved and admired Charles will remember that he really did "intone.")

Indeed, Charles was very nearly right—twenty-five years ago the task looked that bleak. A less energetic and visionary reformer than José would have given up before he started, as most others in fact did. José's anecdote about the reporter who though he was crazy captures perfectly the sentiment of the time. It was, to be sure, a long, hard, slow boring of hard wood. Indeed, as the story unfolds one is reminded that reform is very much like carpentry—first a design, then a frame roughed in, then modifications and changes, then more rough framing. Only as the process nears the end does the fine work of the finish carpenter appear. The hard work is the early groundbreaking, foundation laying, wall-building and roof beam raising.

While I would not presume to write a reprise of a book this ambitious, there are a few points that I would like to leave the reader with. First, the real lesson of this history is that it takes both a vision and a visionary to produce reform. The effort at first looks *Sisyphean*, José succeeded. It was not at all clear at the time that he would.

Second, the simple truth is that José was the leader, and his financial supporters were just that: supporters. Over the years, José "flattered" (or insulted, I was never sure which) his various funders—me in particular—by referring to us as *Daddy Warbucks*. (Truth be told, I never liked the cartoon that much, but I did love the musical, *Annie*, particularly the song *Tomorrow*, when the sun will always be out.) It's true that when I was at the Ford Foundation, I participated with Fritz Mosher of Carnegie Corporation of New York, Tom James of the Spencer Foundation and Denis Doyle of the National Institute of Education (NIE) in funding a broadly based school finance reform effort, including IDRA. We spent a good deal of the money of these agencies in a very worthy endeavor.

And it is also true that money makes a difference, not only to equalize financing among schools, but in providing the intellectual and legal resources to pursue reform. But the plain fact remains: ours was the easy part of the task. The hard part is the "dailyness" of it all, the endless grit of detail and the specter of tasks without limit. It is what Martin Luther King's mother called the capacity to "keep on keeping on." Novel research and analysis, the careful preparation for litigation, and the professional, even personal, risk were very tough sledding indeed.

And third, the history, the story itself, is important. We are our collective pasts. Or as a Chesterton said, "tradition is the democracy of the dead." Only by knowing our history can we hope to escape its shackles and change the future.

Fourth, there is no finish line. While this book is a history, it is also a work in progress. It brings us up to the current day but the story is not over. The major contribution this book makes is to lay the foundation for next steps. José has been a champion relay runner, and with this book he passes the baton to the next runner. There will be a sequel.

Fifth and finally, José is not just a school finance reformer and historian—he and I are *compadres*. Since I am not a Spanish speaker I use this word with some care. My advisor on these matters, Gloria Revilla Doyle, tells me that *compadre* denotes the closest of friendships, the friendship of a father and godfather (or, in the case of *comadre*, mother and godmother); together they celebrate, through close friendship, the birth and growth of a child. This captures, at least symbolically, our relationship. As José is the father of Texas school finance reform I had the opportunity to watch it grow and nurture it in small ways.

I number José among the good friend I have been fortunate to make during the school finance wars. That, too is part of the school finance reform legacy. We worked together, visited schools together, ate, drank, talked, debated, argued late into the night and, most importantly, laughed together. We agreed about most things (though by no means all things): we were serious when we needed to be. But above all, we never took ourselves too seriously. José is living affirmation of that.

He worked hard, he played hard. And in so doing, never lost sight of his goal. Because for José school finance reform was never really an end in itself. It remained (and remains) a means to a larger end: to improve teaching and learning for all children; in particular, to improve the life chances of the poor and dispossessed—*los olvidados*, the forgotten ones—as Luis Buñel called them. José Cárdenas did not forget. This book is a testimony to a life lived in pursuit of that dream, one which paid off for all of Texas' children.

James A. Kelly
Southfield, Michigan
October 1996

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CHAPTER 1

THE TEXAS SYSTEM: 1950–1973

THE GILMER-AIKEN LEGISLATION

From the period of European colonization to 1949, education in Texas was characterized as ambitious in its goals but frugal in resources. In spite of extensive educational legislation by Spain, Mexico, the Republic of Texas and the State of Texas, adequate funding was never a reality. In many sections of Texas, local authorities did not even attempt to offer a semblance of education.

(For an excellent summary of school legislation and finance in early Texas, see Walker, Billy D. and William Kirby, *The Basics of Texas Public School Finance.*)[1]

As has consistently happened throughout the history of the United States, a national crisis is followed by a massive commitment to education. The 1940s manpower crisis during World War II, followed by the post-war baby boom drew attention to the inadequacies of the Texas educational system. In 1947, Gov. Beauford Jester appointed a committee co-chaired by Rep. Gilmer and Sen. Aiken from the Texas Legislature to devise a new plan for bringing Texas education into the 20th Century.

The findings of the Gilmer-Aiken Committee were reported in a 1948 publication, *To Have What We Must*,[2] which called for a minimum foundation program of state and local financial support which was strongly advocated by Dr. Lawrence Haskew of the University of Texas and Dr. J. W. Edgar of the Austin public schools.

The 51st Legislature enacted most of the recommendations of the committee in the Gilmer-Aiken legislation. The key feature of the 1949 legislation was the creation of the Minimum Foundation Program, a prescription for a minimum educational program guaranteed to all of the school-age children in Texas. Financial support would come from state and local shares to be determined on the basis of school district wealth.

The Gilmer-Aiken legislation also created the Texas Education Agency, to be comprised of an elected State Board of Education, an appointed commissioner of education, and a State Department of Education. The legislation also provided minimum teacher salaries and a single salary schedule based on training and experience. Provisions were included for the elimination of dormant school districts, inoperative school districts because of a lack of school-age children, resulting in the reduction of the number of school districts in Texas from about 6,000 in 1949 to approximately 1,600 during the *Rodriguez* court case in 1969.

Although Gilmer-Aiken was a vast improvement in the funding and operation of education in Texas, the legislation was far from perfect. The elimination of dormant school districts was offset by financial incentives provided for small school districts. These incentives became strong barriers for consolidation and the further reduction in the number of districts in the state.

The cost of the minimum foundation program was to be financed by the state share and a local share called the Local Fund Assignment. However, the legislation did not require a school district to provide the local share, leading to the ironic reality that the State of Texas guaranteed each child a minimally adequate education, but the guarantee was voided if the school district did not wish to provide a part, or all, of the local share.

Even when the local share was provided, and some districts with low levels of taxable property made superior tax efforts over and beyond the local fund assignment, the amount of money appropriated for the state share did not keep up with increases in the cost of education. The result was that the combined state and local funding of education did not provide the minimum quality guaranteed by the Gilmer-Aiken legislation.

The minimum foundation program provided funds only for the maintenance and operation of the school program. Since its inception in 1950 to 1996, it has not provided for the funding of capital outlay for school sites, buildings, nor furniture and equipment necessary for educational activity.

Incidentally, the minimum foundation program was renamed the Foundation School Program during the post-1973 period of reform as a public relations ploy to remove the onus of minimal education when the public was clamoring for adequacy.

THE GILMER-AIKEN FLAW: LOCAL ENRICHMENT

By far, the major weakness or the monumental flaw of the Texas system of school finance was the concept of "local enrichment." Once a school district provided the local share of the minimum foundation program, it could provide from additional local taxation additional funding for enriching the educational program. Although there was a cap on the permissible tax rate for local districts, there was no realistic cap on the amount of funds that could be levied, raised and expended on the local enrichment of the educational program by high wealth school districts since revenues were so high that a slight increase in the tax rate would produce an extensive amount of funds.

If the Gilmer-Aiken legislation had chosen to create school districts with equal, or at least similar, tax bases, local enrichment would not have become such a monumental problem in Texas. Unfortunately, Gilmer-Aiken did not redistrict, nor has any subsequent Texas legislation, resulting in a perpetuation of huge disparities in the amount of local funds available to the various school districts in the state. In 1970, a low wealth school district with $5,147 in taxable property per student and a $1.50 tax rate per $100 of assessed valuation produced $77.21 per student to fund the local share of the minimum foundation program *and* enrich the educational program. A high wealth school district with $5,642,114 in taxable property per pupil with the same $1.50 tax rate would produce $8,463,171 per student to fund the entire minimum foundation program and enrich the educational program.

The $1.50 tax rate in the foregoing example is hypothetical; the market values are not. In 1970, when I was superintendent of the Edgewood Independent School District, it had a market value per student of $5,147; the Laureles Consolidated School district had a market value per student of $5,642,114. Edgewood had a tax rate of $1.05 which produced $54 per pupil; Laureles had a tax rate of $0.066 which produced $338,527 per pupil. The average per pupil expenditure for Texas schools that year was $704.[3]

This example illustrates the double-whammy effect of the Gilmer-Aiken enrichment provision. A similar tax rate for poor and rich school districts produced grossly disproportionate revenues; similar revenues produced grossly disproportionate tax rates; or, as was the case in the example above, high wealth school districts had their cake and ate it too, very high tax yields at very low tax rates.

Thus, it is not surprising that the Edgewood School District was in court challenging the Texas system of school finance. What is surprising is that this example was not used in the *Rodriguez* court case. Prior to the creation of Texans for Educational Excellence such data were not readily known or readily available. In *Rodriguez*, the constitutional challenge was based on data from districts with extreme wealth differences only in Bexar County, where the case was originally tried.

Much of the literature on Texas public school finance attributes the problem of disparities in local enrichment to a lack of foresight on the part of the architects of the minimum foundation program, with some reference to the small amount of such local funding at the inception of the Gilmer-Aiken legislation. I disagree. I believe that in the creation of the new system of school finance in 1949, the drafters, the legislature and the educational community wanted to preserve the past elitism characteristic of Texas and United States education. The entire concept of a minimum foundation program enhanced by local enrichment is discriminating in assuming that a minimum education is appropriate for some segments of the population, while a superior education is appropriate for others. Even today, the concept of equal educational opportunity is not generally accepted. All children are equal, but some children are more equal than others.

During the past 25 years I have spoken to hundreds of groups and thousands of people about inequities in educational opportunity, such as those created by inequities in financial resources. For the most part my audiences have not shared my concern, or at least it has not been as disturbing to them as it has to me. Regardless of the theoretical equality of our democracy, there has been and still is a deep feeling that some people are entitled to privileged positions—that some children should receive greater educational opportunity because of the social, economic, political or educational status of their parents.

This elitist feeling is so strong that it has been a formidable barrier to the elimination of fiscal disparities in reforming school systems. Even educators in low wealth districts often accept the shortcomings in the system, and through the years sought an increase in the minimum quality of the school program and additional resources for raising this minimum quality rather than seeking an equalized and equitable system.

The Texas Legislature tinkered for two decades making adjustments to the system, increasing the state investment in education, raising minimum standards and promoting accountability, but never addressing the disparities attributed to the local enrichment provision of the system of school finance. As an endless array of committees studied the problem, and an equal number of dysfunctional legislative proposals attempted to address it, there was a strong temptation to just scream at them the trendy catch phrase, "It's the local enrichment, stupid!"

But of course, stupidity had nothing to do with it. The basic dilemma facing the Texas Legislature during the 25-year controversy over school finance was, "What kind of a system can be devised that will provide all children an equal educational opportunity and still allow for a better education for privileged children?"

It was not until the Texas courts focused on local enrichment as the dominant problem and threatened to close Texas schools that the issue was ever addressed. The Texas Supreme Court, which originally supported a lower court's ruling on equal access to funds, subsequently wavered with the unbelievable addendum stating that the State Constitution demands that all school districts have the same access to funds, but when all districts have the same access to funds, then it is permissible for some districts to have more.

THE COPE WARNING

By 1965, the enrichment flaw of the Gilmer-Aiken legislation was more than noticeable in terms of low revenues and high tax rates in low wealth school districts. In that year, Gov. John Connally appointed the Governor's Committee on Public School Education (COPE) which noted increasing and alarming disparities in funds available to school districts in Texas. The work of the committee resulted in a publication, *The Challenge and the Chance,* which called attention to the increasing disparities and made extensive recommendations for addressing the issue.[4] These recommendations included adding necessary items and increasing state funds for the minimum program, but no recommendation was made for altering or eliminating the local enrichment problem in the system.

As part of its dissemination effort, Texans for Educational Excellence published and distributed in May 1974 a brief history and evaluation of the past school finance reform efforts, *School Finance Reform in Texas.*[5] In this report, Dr. Daniel C. Morgan, Jr., economics professor at The University of Texas at Austin, presents an overview of the committee report:

> The Report [of the Governor's Committee] was a strong and brilliant indictment of the existing Texas system. Given a post-*Rodriguez* perspective, the recommendations are quite mild; but in the political context of Texas at that time, the staff and the Committee did not see them this way. The major recommendations were these:
>
> 1. With few exceptions, all school districts with less than 1,600 pupils in average daily attendance should be consolidated with other districts.
> 2. The state government should finance a kindergarten program initially giving preference to low-income and non-English speaking children. By the late 1970s, all Texas schoolchildren should have the opportunity to attend state-financed kindergarten.
> 3. The minimum foundation program should be strengthened by allocating additional monies for personnel, operations, textbooks and materials. One additional paraprofessional and an extra operating allowance of $1,000 should be allocated to school districts for each 100 students (grades 1–8) below grade level in achievement and from low-income families.
> 4. The State Board of Education should be empowered and given sufficient resources to assess the quality of education in the state, evaluate the efforts of local districts, and make appropriate recommendations to the legislature. (The idea was to create a re-

sponsible State Board of Education which was actually capable of setting education policy. As many would interpret history, this is something Texas had never really had.)

5. All major current expenditure items should be brought under the minimum foundation program so that more equality between affluent and poor districts might be achieved.
6. The Economic Index should be abandoned as a method of calculating relative capacities of local districts to bear foundation school program burdens. Over time, it should be substituted with state-equalized genuine true market values of property of the respective districts.
7. The state government should adopt a program of guaranteed salary increases, mandating increments each year for a 10-year period (i.e., over most of the decade of the seventies).

In this TEE report, Morgan attributes the poor legislative response to the committee's recommendations to a lack of support by the subsequent governor, Preston Smith, and to successful efforts by the Texas State Teachers Association (TSTA) to channel the governor's committee recommendations into a teacher pay raise.

> The Governor's Committee Report was not published or distributed until 1968, as *The Challenge and the Chance.* Its chance for legislative enactment was much reduced from what had been anticipated in the years of research and formulation. Gov. Connally had commissioned the report; the anticipation had been that it would be as with higher education, first a report, then legislative enactment under a relatively strong governor (by Texas standards). But Connally left unexpectedly early, and the governor, Preston Smith, showed little inclination to push the (former) Governor's Committee recommendations. Neither the Governor's Committee nor its staff was in a good position to lobby effectively. On the other hand, the teachers' major lobby, the Texas State Teachers Association (TSTA), saw "the chance" and accepted "the challenge" to turn the situation into a salary increase bill of real magnitude. TSTA turned the Committee Report's recommendation for a higher teachers salary scale on a programmed basis into a higher scale on a programmed schedule. It worked against many of the Governor's Committee's proposals or put serious dampers on them. Very few of the Governor's Committee's proposals were enacted. A state-financed kindergarten was voted, although it was as the result of last-minute legislation and not as a result of early and active TSTA support. The new kindergarten program and the new programmed salary increases were to cost hundreds of millions of dollars each biennium over the previous biennium, automatically, from time of enactment throughout most of the seventies decade, unless legislation to override the legislation was later enacted. This was far more state expenditure than legislators had been given to understand. Many felt deceived by TSTA; they were to remember what they regarded as trickery . . .
>
> Because of these legislative events of 1968, resentment against TSTA smoldered on the part of the staff of the Governor's Committee and on the part of many legislators. This feeling was to have later repercussions, partially because education costs rose automatically by hundreds of millions of dollars, making further expensive reforms just too much for many conservative legislators, partially because TSTA lost many of its regular legislative supporters (particularly in a period of teacher surplus), and partially because many researchers, et al., were anxious for revenge when the opportunity arose. . . .

As indicated by Dr. Morgan's analysis above, observers of the 25-year school finance reform effort in Texas are amazed that teachers and other educational personnel in low wealth school districts contributed so little to the reform effort. Although the Texas Federation of Teachers was consistently supportive, the much larger TSTA not only did not provide support, it was a major obstacle in the early years of proposed reform legislation. Toward the end of the 25-year reform period, TSTA had lost so much credibility in the legislature that it was not much of a factor either way.

It is ironic that strong opposition to school finance reform in Texas by TSTA, the Texas Association of School Administrators (TASA) and the Texas Association of School Boards (TASB) was largely financed by contributions from its membership in low wealth school districts. I believe that the tolerance of an inequitable system by all three groups was characteristic of an innate tractiveness in education which opposes any type of change. Insecure institutions and insecure personnel find security in stability, regardless of the inadequacy or unfairness in the existing stable system. Also, the past seems to justify the present and the future. On many occasions I spoke to personnel from low wealth district about the need for state funds for school facilities. A frequent response was that state funds should not be used for school facilities because school facilities had always been provided by local effort. Opposition to change by professional educators may have also stemmed from a belief in the elitist philosophy and a deeply rooted belief that privileged students were entitled to a privileged education. Some educators perceive salary disparities throughout the state as a career ladder which affords successful teachers and administrators an opportunity for upward mobility.

The failure of teachers in low wealth districts to support school finance reform and to prefer across-the-board increases in teacher salaries may be attributed to their skepticism that equalization of funds resulting in additional resources for low wealth districts would be passed on to teachers for equalization of salaries.

THE LACK OF INFORMATION ON SCHOOL FINANCE

As mentioned previously, the trial of the *Rodriguez* court case was severely hampered by a lack of information about school finance in general and the Texas system of school finance in particular. Prior to the creation of TEE/IDRA, there were vast areas of the finance system in which no information was available. In other areas, such as the large variance in funds available to varying school districts, little information was available. In yet other areas, the information was available only to state agencies and was not commonly shared with the public, let alone with the plaintiffs in the *Rodriguez* case. Although all information held by state agencies, such as the Texas Education Agency, should have been made available to the plaintiffs during the discovery phase of the case, much of the data was unorganized, unprocessed, and therefore, relatively meaningless. Federal and state right-to-know and freedom-of-information legislation had not been enacted, and the state, as the defendant in the court case, provided very limited information for the plaintiff's preparation of the court case.

It may be difficult for younger people living in the Age of Information to comprehend this absence of information, but prior to the onset of the relatively inexpensive personal computer and computer networking, few people had access to information bases. In 1973, TEE had limited access to any kind of a computer. The first research director, Robert Brischetto, was in a doctorate program at The University of Texas at Austin, and most of our early data were processed on his student account. The Texas Education Agency did have impressive computer capability, but its research division had low priority for computer use. At one time, the TEA research division had such a difficult time in accessing its computer that raw data were being sent to IDRA where it was processed, returned to the agency, and then issued in TEA reports subsequently available to IDRA and other institutions.

In 1975, IDRA purchased its first computer, an IBM 5110, which was marketed as the first "portable" computer, although it required at least two strong persons to move it. The IBM 5110 had 64,000 bytes of RAM (64K) and no internal disk memory. All information was entered by the keyboard or by 10-inch diskettes. There was no commercial software for it at the time, and such statistical treatments as measures of central tendency, dispersion and correlation were programmed in-house. Still, the IDRA computer capability provided by the IBM 5110 and its replacement, the IBM System 34, gave advocates of school finance reform independence in conducting research and eliminated the past dependence on data as provided by the state and the Texas Research League.

A decade after the U.S. Supreme Court reversal of *Rodriguez,* I was asked why the extensive amount of data available about school finance did not surface in the court case. My reply was that there was no such available data; the availability of data came about because of *Rodriguez. Rodriguez* led to a sustained 10-year research effort by individuals, organizations and institutions which provided the necessary research information for the success of post-*Rodriguez* court cases throughout the country.

In post-*Rodriguez* deliberations in the Texas Legislature and finally in the Texas courts, it was necessary for the proponents and opponents of school finance reform to sit together and agree on terminology, definitions and parameters in order to make sense out of the various arguments for and against reform. Prior to such an agreement, a simple term, such as "average daily attendance (ADA)" (the average number of students attending school) might reflect

- "membership" (the number of students enrolled),
- "gross average daily attendance" (all types of students for all purposes),
- "ineligible average daily attendance" (not resident, under or over aged),
- "shared attendance" (attendance of students in cooperative units enrolled from two or more districts),
- "refined average daily attendance" (the gross minus the ineligible average daily attendance),
- "special program average daily attendance",
- "regular program average daily attendance" (refined minus special program ADA), or
- "weighted average daily attendance" (including weights given to various classifications of special program students).

Even after the agreement on terminology and definitions, it was not unusual for the wrong data to be made available or to be provided gross data without the necessary information for refinement into the various categories as illustrated above. Although I am sure that the provision of some erroneous data was due to unintentional errors, I am equally sure that the provision of some erroneous data was intentional, leading to the production of erroneous data that would be challenged in subsequent legislative processes.

MYTHS IN SCHOOL FINANCE

Considering the lack of data and public information about school finance, it was not surprising that during the 22 years that TEE/IDRA has been active as an advocate for the creation of an equitable program in Texas, our advocacy has been continuously hampered by erroneous public perceptions of the nature of the problem and the feasibility and desirability of solutions. Even today, the general public has a poor understanding of the current school finance system and its past and present flaws.

Unfortunately, the public media have done little to clarify the myths and misconceptions in school finance. TEE/IDRA conducted an extensive number of briefings on the various issues during the past 22 years, but our efforts were hampered by a variety of media shortcomings.

First, the media tended to be supportive of the privileged system that the reformers were attempting to change.

One evening, I was being interviewed by a noted TV personality in a local evening news segment. In the course of the interview I mentioned that the state's school finance system did not provide additional funds for students with limited proficiency in the English language nor for students from poverty homes. I then suggested that an increment be provided school districts for programs responding to the needs of hard-to-teach children. After asking several clarifying questions, the TV reporter responded in an incredulous tone, "If such a provision would be made, wouldn't children in Edgewood receive more funds for their education than children in Alamo Heights (a wealthy suburban district in San Antonio)?" "That's right," I responded. "That's the most absurd thing I have ever heard," he commented and immediately concluded the interview.

After the show, he again made me go over my suggestion, refusing to believe what he had heard. I explained that the idea was not really incredulous and not even innovative. Students in special education classes had been receiving financial supplements since the establishment of the minimum foundation program, with some of these supplements being as much as 15 times the amount provided for regular students. He could accept this, but the concept of children in Edgewood receiving more support than children in predominantly white Anglo school districts was repugnant and unacceptable.

Second, even when the media attempted to be objective, they were seldom successful. Few newspapers, magazines, radio or TV stations maintained a tenured education specialist. It was not unusual when contacted by a reporter on some school finance issue to spend more time explaining the system than in describing what was wrong with the system. I remember speaking to a newspaper reporter from Houston who was very concerned over what a reform proposal would do to the Houston school district, "the richest school district in Texas." I asked why he ranked Houston as the richest school district, and I was immediately informed that he had seen a listing of school district budgets, and Houston's was the biggest one in the state. I spent considerable time explaining that Houston also had the largest number of students of any district in the state, and if district budgets were divided by the number of students, Houston would have a very modest placement in the listing of district wealth.

Third, the media did little research on school finance data and tended to perpetuate the myths and misinformation which have caused the public, educators, the reformers, and even the courts extensive problems. Changes in the amount of funds made available by the state as a result of proposed legislation would consistently be presented as a loss of funds for the district and the community.

The lack of information on school finance was so pervasive, that to my knowledge, out of the 800 below average wealth districts in the state, only two school districts provided support during the *Rodriguez* court case—the Edgewood School District where I served as superintendent and the San Antonio School District, led by Dr. Harold Hitt, one of the best informed and most insightful superintendents that I have ever met.

During the Supreme Court appeal of *Rodriguez*, many of the low wealth school districts enacted resolutions and appropriated funds for opposition to *Rodriguez*. A typical resolution was enacted by the Harlandale School District in Bexar County, in which the board expressed support for the current system of school finance because the remedy in the court case would take money from a wealthy district like Harlandale and give it to a poor district like Edgewood. At the time that this resolution was enacted, Edgewood was the poorest district in the state; Harlandale was the eighth poorest district out of 1,600 districts in the state. Subsequently, it became obvious that neither the administrators of the Harlandale district, nor the members of the board, nor their attorney had the vaguest idea of the poverty of their district nor the advantages of *Rodriguez*.

The following is a random listing of some of the myths of school finance which surfaced repeatedly during the past 22 years and are still widely perceived as reality by the general population.

Myth #1. Only the privileged care for their children This misconception is not exclusive to school finance or education. Our entire society and its dysfunctional responses to societal problems is based on the myth that the rich and privileged have an interest and concern for their well-being and their children's well-being that is not shared by the general population. The rich are able to do a great deal for their children because they have the time, the money and the power to do so. The disadvantaged seldom have the resources or the skills for the manipulation of social institutions.

It is erroneous to conclude that educational benefits accrue to the children of one economic level and not to the children of other economic levels because of concern and care. On the contrary, it has been my experience that bonding in low socio-economic families is stronger than in the high sector, but unfortunately, too much of the result of their intense family ties is dissipated in trying to make ends meet, in avoiding exploitation of their economic plight, and in fighting the impact of their poverty.

In many cases, social institutions, including the schools, tend to create more problems for the child and his/her family than they attempt to solve.

Along with the concept that the privileged have better schools because they care more for their children, I have found a strong sentiment that the children of the rich are entitled to a better public educational opportunity. I find this attitude, which is so contrary to our democratic principles, very pervasive at all social and economic levels, and it may be one of the fundamental reasons for a general lack of support for school finance reform over the years.

Myth #2. The privileged have better schools because they pay higher taxes For more than two decades we have heard a justification for the disparities in available educational resources based on the argument that schools for children of privileged families are better because their parents are willing to make the necessary financial sacrifices to provide better schooling through higher taxes. This myth persists in spite of 20 years of school finance data which show that residents of low wealth districts make a much higher tax effort than residents of high wealth districts. The analysis of these data indicated early on that tax rates in the poorest school districts were commonly 50 times higher than the tax rates in the wealthiest districts.

Even after several years of court-ordered equalization, there remains a negative correlation between wealth and tax rates. The higher the wealth, the lower the tax rate; the lower the wealth, the higher the tax rate.

During the years of the school finance reform effort, there were three "military" districts in metropolitan San Antonio. These districts are located on military reservations, serve the children of servicemen, have the same status as other local districts, but have no taxable property since federal installations are tax exempt. The districts received state funds but did not have access to local enrichment tax funds, although this constraint was more than compensated for by federal funds available under the impact aid program and from the Department of Defense. The amount of federal aid available was sufficient to rank the military districts as the richest in the county, and the superintendent of one of these districts was the highest paid of the 12 district superintendents in spite of the district being by far the smallest one in the county. In a budget-cutting move, the Department of Defense eliminated its subsidy for the operation of military school districts leading to a severe loss of funds available to them. In spite of the loss of federal funds, the military districts still had revenues higher than those available to the poorest school districts in the county.

Immediately following the federal loss of funds, the Texas Legislature made the necessary amendments to its system of school finance in order to partially compensate the miliary districts for the loss. There was no discussion about a lack of state funds, the need for consolidation, or any of the dozens of arguments we had been hearing for two decades about the difficulty in implementing an equitable system. Additional funding was immediately provided to bring up the state share to the level of the average state and local share in the county. This immediate and emergency legislation provided for the military districts to maintain a level of spending considerably higher than the levels for the low wealth districts in San Antonio. Not only did low-tax-paying citizens in rich school districts have more funds for their children's education, children in some school districts without any property taxes still received more revenues than children in high taxing, low wealth districts.

I applaud the efforts of the state education agency and the legislature in responding so effectively to the needs of the children in the military districts. I regret that it took more than 40 years and extensive litigation for them to respond to the needs of children in the Edgewood School District.

Myth #3. Expenditures in high wealth districts have little effect on low wealth districts Immediately after the creation of TEE/IDRA and its commitment to reform the Texas system of school finance, I had an opportunity to meet with a group of superintendents from nearby low wealth districts. I expected to find a very supportive audience eager to bring about drastic reform in the system, but I was disappointed in receiving only a lukewarm reception. After presenting a number of visuals depicting wealth, tax and revenue disparities, one of the superintendents in attendance responded with the statement that he was already aware of these disparities, and that he could live with them. He added that he was interested in what our organization could do to raise the minimum level of funding for students in his district, and he had no concern over high wealth districts expending much more. The applause given his remarks indicated a strong consensus of agreement among the school officials present.

This concern over amounts and quality of minimum programs and a lack of concern over disparities was a consistent attitude toward school finance reform during the two decades of our activity. Of the more than 1,000 school districts in Texas, with more than 500 being below the state median in district wealth, only 13 of the poorest districts signed on as plaintiffs in the state court case. Although many others intervened in behalf of the plaintiff districts, many of the intervenors were more interested in raising minimum programs than in establishing an equitable system. At one point in the state court trial a spokesperson for the intervening districts described existing inequities as desirable in that it forced the state to pump in new money each year. He compared the poor districts to rabbits in a dog race serving an important purpose in giving the dogs something to chase.

Another reason for the lack of school district participation in school finance reform efforts was fear of retaliation by the defendant Texas Education Agency. There is no question that during my four years as superintendent of the Edgewood School District, which were the four years of the *Rodriguez* court case, I, and the district, were subjected to extensive harassment by the state agency. TEA audits relatively unknown in other districts, were frequent and meticulous, although they consistently proved fruitless. Due to a superior accounting system and good management, not a single penny in disallowances was ever identified during the 4-year period. The inconvenience of surprise audits was greatly offset by a sympathetic supporter at the Texas

Education Agency who consistently warned me of such surprise audits, as well as what the agency was looking for. In every case, the information that was requested for these audits was researched and prepared well in advance.

Minor infractions of the district were magnified during the *Rodriguez* court case. For example, I received notification that an employee of the Texas Education Agency traveling through the Edgewood district had noticed that the state flag was not flying on a school day. I was informed that under state law, funds for the operation of that school would be disallowed if not remedied by the next day. An investigation revealed what I had already suspected: flagpole ropes make good clotheslines, and some nearby resident had appropriated the school's. To prevent further threats of loss of funds it was eventually necessary to use wire welded into a loop to keep the Texas flag flying.

A large disallowance in Title I funds incurred by a previous administration and never settled was similarly used as a threat by the Texas Education Agency against Edgewood's participation in school finance reform. Several times I received calls from the agency informing me that the debt could be eliminated if I would quit my foolishness and stay out of school finance matters.

The fear of retaliation by the Texas Education Agency for school finance reform advocacy was such that it prompted my resignation from the school district in order to participate in the design of a new system of school finance. It was obvious that my continued employment by a district subject to TEA regulation placed me in too precarious a position to be really effective in bringing about a change in the system. James Vasquez, the dynamic superintendent of the Edgewood district during the *Edgewood* litigation, frequently reported similar harassment.

I believed then, and I believe now, that the effect of wealth disparities between school districts did not receive the attention it deserved during the entire reform period from the defendants, the courts, educators, the media, the general public, or even the plaintiffs. Edgewood is one of 12 independent school districts in metropolitan San Antonio. It does not exist in isolation, but rather in competition with the other 11 school districts. All 12 districts recruit teachers, special service personnel, supervisors, administrators and other staff from a common labor pool. Since Edgewood was the poorest of the 12 school districts, it was limited in the amount of enrichment funds that could be utilized to supplement the state minimum salary. During my tenure as a teacher and principal in Edgewood, the state minimum salary was the salary schedule used. There was no supplement. As a result, Edgewood and other very low wealth districts became the training ground for school personnel who could then be hired in other parts of the city. If they performed well, they were motivated to apply for a position in a nearby higher-paying district. Since few of the Edgewood professional personnel came from the district itself, moving to another district meant working closer to home, with a higher salary, better fringe benefits and superior working conditions. Edgewood was forced to hire emergency non-certified teachers. If they completed their certification requirements, jobs were readily available elsewhere. This led to a trend of a constant outward flow of the best performing personnel. When I became district superintendent in 1969, more than half of the teachers in the district did not meet the minimum requirements for certification and were teaching on emergency permits. The annual teacher turnover rate was 33 percent. One-third of the instructional staff had to be employed and trained each year.

In some cases, the training and experience of emergency certified teachers were exceptionally bad. When I was teacher certification officer at St. Mary's University, I was almost sued by a math secondary school teacher in Edgewood for not recommending an extension to his emergency certificate. The case was dropped when I reviewed his transcripts with his attorney. Not only had the math teacher in question never taken a math course in college (he was a music major and an excellent musician), but he had been admitted to college on a probationary status because he had failed all of his math courses in high school.

Although the handicap in recruiting and keeping teachers was the most obvious hardship in the competition among school districts, there were other more subtle competitions, not generally recognized, but psychologically detrimental to the students. For instance, Edgewood participated in the University Interscholastic League activities. In each of the three high schools, the football, basketball and baseball teams were each coached by a single individual. If the coach in one sport needed assistance, he could be helped by one of the coaches from the other sports, provided that it did not interfere with the other sport's season. The Edgewood teams competed against teams that had as many as six coaches—offense, defense, line, receivers, quarterback and other coaching specialties. It was heartbreaking for me, as well as for the students and coaches, to see the Edgewood teams consistently defeated by other teams with superior coaching, along with superior equipment and practice fields. In spite of a lack of financial resources, Edgewood did produce some outstanding coaches, but these successful coaches moved on to better paying positions in wealthier school districts.

Neither educators nor the general public appear to have given extensive thought to the psychological implications of kids being consistent losers, not necessarily because of a lack of talent, but because the system does not provide adequate resources for the development of talent. The effect of these inequities can best be demonstrated in football or basketball competition, but the effect is present in all interscholastic activities and to the same extent in the academic program.

One time when I was vice principal at Edgewood High School and prior to the desegregation of schools following the U.S. Supreme Court *Brown* decision, I was asked by the superintendent to provide some type of assistance to the principal of the district's segregated black school. As I was walking through the campus, I heard a strange sound, as if many persons were simultaneously drumming their fingers on a flat surface. Curiosity got the best of me, and I peered into the classroom. What I saw made an effect on me that has lasted a lifetime. I was looking at a typing class with some 20 African American students. The students had drawn typewriter keyboards on pieces of cardboard and were practicing their typing on non-existing typewriters, their fingers hitting the place in the cardboard where the letters were depicted. This experience came to mind just a few years later when the personnel director of one of San Antonio's military bases stated that they had very few African American employees in secretarial positions because they had found that African Americans had poor typing skills. I would imagine so. If typing instruction was provided on pieces of cardboard rather than on real typewriters, in the absence of a strong affirmative action program, African American applicants for competitive civil service positions would be hard pressed to land a job.

In the October 1973 issue of the TEE *Newsletter,* I presented a plan for a state program of construction assistance to Texas school districts.[6] Since the state did not include facilities in the minimum foundation program, this aspect of school finance was the most inequitable part of the Texas system. In the article, I mentioned that 30 states had such programs, and I warned that the local property tax provided too narrow a base to continue supporting the cost of school construction. Shortly after the publication of this article, I met with Camila Bordie from the Texas Legislative Council, and we worked out a bill to provide state construction aid to Texas school districts. Such aid was to be provided to school districts with low wealth and high tax effort, rapidly growing districts, and districts with old and obsolete facilities. Camila Bordie obtained a sponsor for the bill, it was introduced in the legislature and it was referred to the House Education Committee. A hearing was scheduled, and I disseminated the date, time and place. On the day of the hearing, not one single school superintendent, not one single school board member, not one single educator from a school district in the entire State of Texas showed up to testify in support of the bill. Needless to say, the bill died in committee.

It is strange that so many educators did so little to bring about school finance reform in Texas. The argument that funds should be focused on raising minimums rather than on achieving equity has always seemed an admission that their students are less than equal and should be treated as such in the educational system.

Myth #4. Disparities in spending should be corrected only by upward leveling During the entire 25-year school finance reform effort, educators from high wealth school districts purported to be sympathetic to the plight of low wealth districts but insisted that it would be detrimental to equalize by taking away the privileged position that they held. Instead, their consistent argument was that it was the responsibility of the state to increase funding for low wealth districts in order to raise their revenues to the status of high wealth districts.

The apex of this argument came about when the state courts had found the state system of school finance unconstitutional, and it was no longer a question of whether the system should be equitable, but rather, how the system was to be made equitable.

The argument that equity can best be achieved by leveling upwards sounds reasonable until one considers the resources involved. In the October 1991[7] issue of the *IDRA Newsletter,* I presented arguments showing that leveling upwards was not a feasible solution:

> . . . Everyone in Texas would be extremely happy if disparities were removed and no school district would have less money under the new system than they had under the old system.
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> This goal may be admirable in theory, but it is indefensible in practice. To bring all school systems in the state to the level of the highest expending school district in Texas this past year would require an additional state appropriation of $45 billion. Considering that the state legislature turned catatonic at the prospect of having to provide $4.5 billion in additional appropriations to address the state deficit, it is inconceivable that it would consider a massive leveling up as recommended by high wealth school districts. Nor would the general public react favorably to or support a $45 billion increase in school taxes.
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> High wealth districts concede that the state has limited resources to eliminate existing disparities, therefore the disparities can be slowly eliminated over a period of time. Leveling up would consist of the allocation of additional state money on the basis of low wealth until all districts are on a par with the wealthiest. Unfortunately, this will never come to be. Not only is the disparity so great that several generations of children would finish school under the present inequitable system prior to parity being achieved, but the failure to provide a practical cap for high wealth districts allows them to continue to increase disparities at the high end of the expenditure range as the state pours money in at the low end.
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> In the past 40 years since the implementation of the current system of school finance, each attempt by the legislature to narrow disparities with the infusion of huge sums of money for low wealth districts has resulted in an increase in expenditures by high wealth districts which has actually increased the disparities in wealth. The appropriation of $4 billion in 1984 through House Bill 72 was completely eroded by the time of the *Edgewood v. Kirby* trial in 1986, with disparities in school district spending being *greater* than prior to the infusion of the massive amounts of funding.

Myth #5. Reform efforts result in loss of funds for rich districts Every time that an attempt was made to reform the system to provide increased equity, the cost effects of the proposed change were estimated by the Texas Education Agency and reported in the public media. Inevitably, the projections in the reported data failed to take into consideration existing inequitable tax rates, and thus high wealth school districts were depicted as losing huge amounts of funds. In each case the amount reported as a loss was contingent upon a continuation of inequitable and low tax rates for the high wealth districts, a condition seldom or never mentioned in the report.

For example, a rich school district would have a tax rate of $0.50 per $100 of valuation, when the average tax rate for districts in the state was $0.75, and some of the poorest districts had tax rates of $1.50. A proposed equity change that would reduce the state subsidy for the rich school district would mean a reduction of revenues only *if the rich school district continued its privileged tax rate of $0.50.* In many cases, an increase of 10 cents in the tax rate, which would still be 15 cents lower than the state average, would continue to produce more revenues than in poor schools districts with a $1.50 tax rate.

Projections released by the state and reported in the media as losses of millions of dollars in school funds for wealthy schools districts without indicating that it was assumed that the low tax rate would remain constant, provided a distorted picture of the effects of the proposed change with extensive concern and sympathy for the children in high wealth districts.

Myth #6. Caps on school expenditures are unfair Since its inception, the Texas system of school finance has always provided limitations on the amount that can be expended for education at both the state and local levels. Throughout its history there has been a limitation on the maximum tax rate that may be enacted to supplement with local enrichment funds the inadequate provisions of the minimum foundation program.

In middle wealth school districts, the cap on the tax rate has served as a mild limitation on how much can be expended in support of the educational program. In low wealth districts, the limitation on the permissible tax rate has served as a severe constraint on the quality of education. Even at the highest tax rate permitted by state law, low wealth school districts could not compete for the acquisition of personnel and material resources.

The disparities in revenues for districts with varying wealth resembled a traveling worm. As more money was allocated for the low wealth districts, a slight increase in the tax rate in high wealth districts was reestablished, and in most cases, exacerbated the disparities.

Since the state revenues available for equalization were finite, it was evident very early in the reform period that low wealth districts would never catch up unless the limitation on tax rate was extended or replaced with a limitation on revenues. Each time such a recommendation surfaced, there was a loud cry from educators and patrons in high wealth school districts that it was detrimental to place a limit on the quality of education in the state.

It is difficult not to accept this argument, but it was evident that without such a limitation all efforts for the creation of an equitable system were doomed. As stated previously, it was extremely unfair to place a cap on local enrichment which served as a constraint on only the low wealth districts. A better alternative is to place feasible constraints on all districts and to place no limitation on the amount that the state can expend on education with all school districts receiving equal benefits.

For all practical purposes, limitations on the quality of education have always existed, even in the wealthiest school districts. Regardless of the amount expended for education in high wealth districts, local school campuses within a district have never had the prerogative of outspending other campuses within the district. It is difficult to accept the concept of unlimited disparities in interdistrict expenditures, when districts observe rigid limitations on intradistrict disparities (see Chapter 9).

Expenditure disparities are caused by unlimited local enrichment which in turn is extremely inequitable because of large disparities in local wealth. Until such time as these local wealth disparities are neutralized, there can never be an equitable system of school finance in the state.

Myth #7. Money does not make a difference As the threat of fiscal equalization arose, there was a consistent reaction from high wealth districts asserting that there was no need for an equitable system since "money does not make a difference."

This argument first surfaced during the *Rodriguez* trial. When the federal court noted a much higher level of expenditures in the high wealth district than in the low wealth district documented in the court case, the immediate response by defendants was that the different levels of expenditures did not necessarily indicate a better educational program in the high wealth district. At one point, defendants argued that the excess wealth was used for the development of curricular materials which were then made available to low wealth districts, thereby nullifying the advantages of wealth.

This argument would have been difficult to accept even if it were true. Curriculum developed for affluent students in high wealth districts is usually not appropriate for use in low wealth districts with high concentrations of economically disadvantaged, minority, migrant, immigrant and limited English proficient students. Actually, many of the educational problems of such atypical students can be attributed to the failure of the elitist American educational system to develop and implement materials and methodologies compatible with the characteristics and needs of atypical school populations.

In the Texas system of school finance, the rationalization of the advantages of wealth with a trickle down concept of benefits accrued was moot. The additional funds available to high wealth school districts were not allocated to curriculum development, shared or unshared. The bulk of the additional funds were used in augmenting personnel salaries and fringe benefits to attract and retain the best trained, experienced and most successful school personnel. The next highest priority for enrichment funds was for the purchase of instructional materials, equipment and facilities to augment the meager supply provided or completely absent in the foundation program.

The defendant's argument that money does not make a difference reminds me of the time when President Abraham Lincoln was intending to sign the Emancipation Proclamation which would free the slaves. Prior to his signing the proclamation, he was visited by a pro-slavery delegation that went to great lengths to extol the advantages of slavery. Their arguments in behalf of slavery were not found very convincing by Lincoln, who could not help but note that slavery could not be all that desirable considering that none of the speakers would wish it upon themselves.

My fundamental question during the school finance effort was, "If money does not make a difference, why are the rich districts fighting so hard to retain it?"

Myth #8. Robin Hood is evil Under strong pressure from the state courts, the legislature enacted a new school finance system in 1991 based on the creation of County Education Districts that provided an equalization within 188 county and multiple-county taxing entities which eliminated most of the expenditure disparities at a very low cost to the state. Both in efficiency and in cost to the state, this plan, enacted as Senate Bill 351, was the best response to state inequities in school finance developed during the entire reform period, even vastly superior to the current law finally found acceptable by the courts.

Once the courts had established that the old system of school finance was unconstitutional, the goal of the reformers was to conceptualize a new system that would provide total equity and be affordable. One of the salient problems of the old system was that there were many very high wealth districts with extremely low tax rates. In some, the tax rates were so low that they were commonly referred to as "tax haven" school districts.

Albert Kauffman, lead attorney from the Mexican American Legal Defense and Education Fund (MALDEF), who represented plaintiff districts in the *Edgewood* suit, and José A. Cárdenas, executive director of IDRA, independently undertook the task of designing a new and equitable system. Both efforts resulted in a similar design, the use of counties as the base unit for the assessment, collection and distribution of local enrichment funds. With assistance from Dr. Albert Cortez of IDRA, the concept was presented to state Sen. Hector Uribe from Brownsville and Rep. Gregory Luna from San Antonio, both strong advocates of school finance reform.

The two legislators introduced the bill for the creation of the county districts. Subsequently, Sen. Carl Parker submitted a similar bill in the senate. After much change and compromise, the proposed legislation emerged as Senate Bill 351, and it was signed into law by Gov. Ann Richards in May 1991.

The concept of various districts with varying wealth sharing tax bases was immediately labelled and addressed by the media as the "Robin Hood" plan. It was called such because it took tax revenues from rich school districts and gave them to poor school districts. All of a sudden, Robin Hood changed from a boyhood hero into a Texas villain. In response to the negative publicity being given Senate Bill 351 as the Robin Hood legislation by high wealth districts and the public media, the following article by José A. Cárdenas appeared in the September 1991 issue of the *IDRA Newsletter*.[8]

> During the formulation of the new law, Senate Bill 351, and subsequent to its passage, this piece of legislation has been identified in the local, state and national media as the "Robin Hood" plan for school finance equity. This sobriquet is invariably accompanied with the explanation that the new system of school finance takes money from rich school districts and gives it to the poor.
>
> This stigmatization of the new system of school finance is unfortunate, since it is erroneous. Senate Bill 351 does not take money from rich school districts and gives it to poor school districts. Senate Bill 351 does create a new taxing unit in which taxes collected are used for the population of the unit. But, this is no different from city, county, state or national taxes in which the proceeds are expended according to perceived needs in the taxing entity. If the new school taxing entity is based on a Robin Hood model, then so are the tax and spend characteristics of all taxing entities.
>
> Prior to the enactment of Senate Bill 351, each of the 1,056 school districts enacted a mandated tax rate. If the local yield produced less money than what was needed to finance the foundation school program, the state made up the difference. If the local yield in high wealth school districts produced more money than what was needed to finance the foundation school program, a school district could use the additional revenue to enhance the district's school program and/or lower the tax rate.
>
> In some very high wealth districts a tax rate at 15 percent of the average school tax rate for the state provided more money than what the school district could effectively utilize. Unfortunately, low tax rates in high wealth districts provided a tax shelter, or very low taxation of high wealth property, at a time when the state was experiencing a crisis in providing funds to augment low wealth district tax collections.

> The creation of the 188 county taxing units provides for the revenue from a set tax rate to be distributed equally among all districts in the county, with the state still augmenting local revenues if the county education districts fail to raise sufficient funds for the basic school program. The use of the county units provides an equal tax effort for rich and poor districts alike, with the amount of the state subsidy for poor school districts being reduced by the excess revenues in high wealth districts. The county district makes no impact on low wealth districts other than some of the support coming from the high wealth district revenues *rather than from the state.*
>
> The sole beneficiary of the county system is the state rather than the low wealth districts. Naturally this benefit will be passed along to the average taxpayers of the state who will not have to pay high taxes in support of low wealth school districts while high wealth goes relatively untaxed. Under the new system the previously untaxed wealth is now being tapped so that all taxpayers share more equally in supporting area schools.

Myth #9. Consolidation is the solution Prior to the enactment of the Gilmer-Aiken legislation in 1949, there were about 6,000 school districts in Texas. Many of these districts were "dormant" districts, districts that had no students but continued as political entities without a need for taxation since no schools were operational. Gilmer-Aiken eliminated all dormant districts and provided for the elimination of districts that lost their enrollments. Since no minimum number of students were stipulated in the legislation, as long as a district had at least one student it remained functional.

Gilmer-Aiken was contradictory since it forced the consolidation of dormant districts, but at the same time provided incentives for the continuation of small, dysfunctional districts. The legislation provided a special stipend for "smallness." According to a February 1988 article in the IDRA *Newsletter,*[9] 730 of the state's 1,061 school districts (69 percent) were receiving this special stipend provided to small districts with less than 1,600 students. The article cites another reward for smallness:

> In addition to the financial subsidy to school districts with less than 1,600 students, the foundation school program provides further subsidies in support of smallness. In computing the amount of state assistance to be provided under the program, districts report either the number of students in average daily attendance or 130 students, whichever is greater. The foundation program provides minimum support for 130 students, even if the number enrolled is less.
>
> This subsidy and financial incentive for smallness applies to 99 school districts in Texas, enrolling 7,506 students, but receiving funds for 12,870 students. Multiplying the number of non-existing students by the average operating cost of the foundation program produces an expenditure of $16,564,032, with the state paying its share of this cost in support of 5,364 students who do not exist.
>
> Two important questions surface in the light of these data. First, what is the quality of educational opportunity afforded to the students in such small groupings? And second, what is the cost to the State of Texas in support of such an extensive number of financially inefficient small school districts?

In most cases, the small, inefficient school districts were perpetuated because they provided a tax haven for the property owners. A favorite, but extreme, example was the Provident City School District in Wharton County. According to the IDRA publication, *Texas School Finance Data,*[3] the district had $7,723,507 in taxable property, a tax rate of $0.21 on market value and a 1973–74 enrollment of only one student. The nearby Wharton district had $57,844 in taxable property per student, a tax rate of $1.05 and an enrollment of 2,853 students. The consolidation of the two districts with the Wharton tax rate would lead to a Provident City tax bill of $78,780. Maintaining the Provident City district for one student cost property owners in Provident City $16,220, an annual property tax savings of $62,560. The last year that Provident City was operational, it had one student who was in attendance only three-fourths of the school days, producing an annual average daily attendance of .75. Eventually, Provident City lost its one frequently absent student and was merged with another district, losing its privileged position as a tax haven.

During the legislative battles for school finance reform, a number of such small school districts formed a lobbying group for the preservation of small, tax haven districts. Its name was "The Committee for the Preservation of the Little Red Schoolhouse."

On the other hand, consolidation has never been perceived by IDRA as a panacea for solving the school inequity problem in Texas. Research in school administration has shown that there is an optimum size for school districts, with a tendency for districts with a smaller number of students to be inefficient and ineffective. There is also evidence that there is also an optimum size on the large end of the scale, with districts with excessive number of students tending to be bureaucratic, unresponsive, inefficient and ineffective.

Segments of the school finance reform movement in Texas focused early and exclusively on consolidation as a solution to existing inequities. I believe that the concept of huge tax savings by extensive consolidation is a myth. Wealth is distributed very unevenly throughout the state. In many communities, the consolidation of adjoining school districts would produce one large property-poor school district with a low tax base, a high tax rate and a low tax yield, the very characteristics which both the *Rodriguez* and *Edgewood* court cases were attempting to eliminate. As evidenced in the creation of the County Education Units in Senate Bill 351, the 254 counties in Texas had to be collapsed into 188 county and multiple-county units to achieve a semblance of wealth uniformity. Although this legislation did create some very large entities, their function was only for the collection and distribution of taxes, and they had no role in the administration of the schools in the various districts involved.

As pointed out in the February 1988 IDRA article on consolidation,[9]

> . . . the merger [of all Bexar County districts] would result in a large, bureaucratic school district with some 250,000 students which would immediately start to seek ways in which it could decentralize in order to be more responsive to the unique needs of the various segments of the community. As the size of a school district increases, it reaches a point where largeness starts to become a liability rather than an asset. Certainly the continuous efforts of the nation's large urban school districts to find ways to decentralize and be responsive to the varying community characteristics would indicate so.
>
> Research in school finance indicates that the creation of a large school district does not result in significant savings in administrative costs. The need for a large bureaucratic administrative structure to operate the large district results in increased costs rather than savings. The elimination of a dozen school district superintendents would demand the creation of a dozen new positions in the new system at a similar cost.
>
> Past administrative assumptions that bigger is better have not proved true in contemporary research. Effective schools research has shown that very large schools are detrimental to student adjustment and performance.

The nine myths described above did not appear in any special order or sequence but appeared continuously in public opinion, legislation and litigation. Some of them were the result of public ignorance about the system of school finance and mistaken notions about the reasons for the existing inequities. The myths were commonly presented in the public media which tended to give them undeserved creditability. In retrospect, it appears that no sooner had a specific myth been addressed and refuted by advocates of school finance reform before another myth surfaced or resurfaced in opposition to reform.

The myths were widely disseminated by both educators in high wealth districts as well as the defendant state agencies in Texas. This was surprising because both educators and agency personnel knew better. Professionalism was quickly and easily compromised in behalf of the preservation of the elitist system of education in Texas.

PERSONAL PERSPECTIVES ON EDGEWOOD

It was my lot to be associated with the inequitable system of school finance since its inception. As a senior at The University of Texas in 1949–50, the legislative arguments in Austin were closely followed. The enactment of the Gilmer-Aiken legislation was the deciding factor for my going into the field of education. The prospects of a $2,400 minimum annual salary removed the final barrier to a personal and professional commitment to education.

The first year of the implementation of the Gilmer-Aiken bill was also the first year of my teaching career. I started in 1950 as a science teacher in the Laredo public schools. Laredo was a very low wealth district, but I must admit that I failed to detect the flaws in the system. First, the enactment of the new law provided a vast improvement of the Laredo schools. Second, disparities among school districts did not start to manifest themselves until several years into the new law. Third, there were no high wealth systems in the vicinity at that time to compete with the Laredo School District. In spite of this, I was aware of the limitations of teaching science in the total absence of laboratories, equipment and materials.

In 1953 I started teaching in the Edgewood District, a district destined to become infamous because of the federal *Rodriguez* and the state *Edgewood* court cases. By then, the post-World War II baby boom had hit the schools, and Edgewood was unable to keep up with the all locally funded expenses for facilities as stipulated in Gilmer-Aiken. My teaching assignment in Coronado Elementary School, like most others in the district, was for a half-day session. Another teacher used the room from 7:00 a.m. to 12:00 noon, and I used the same room from 12:00 noon until 5:00 p.m. No janitorial services were provided between the split sessions; therefore, the first order of business was cleaning up the room, straightening up the furniture and erasing the blackboards. On occasion there would be a note on the only blackboard asking, "Please do not erase the board" which created a dilemma since that precluded using the blackboard for that day.

No instructional materials were made available, and expenditures for chalk, pencil sharpeners, maps, paper, pencils, duplicating masters and paper, workbooks, lost textbooks, etc. came from my $2,400 annual salary. There were no support personnel in the school, not even a secretary who could type materials to supplement the meager supply of textbooks that I shared with my roommate teacher. The school did not have a library, but a San Antonio Library bookmobile did come around every two weeks to distribute and pick up the two books allowed each student.

The following year, I was transferred to Edgewood High School as a general science and biology teacher. At the start of the year, facilities were worse than at Coronado Elementary School. My classes were scheduled in a wooden shack with wooden tables and folding chairs. The size of the room was so small and the number of students so large that it was necessary for some of the tables to be stacked up in order for teacher and students to enter or leave the room. A student arriving late to class would require that everybody stand up, rearrange the furniture to allow the newcomer to enter and again rearrange the furniture to allow students to sit down.

I was lucky to have that one-room shack. Martin Reyna taught his classes in the school bus, when it wasn't being used for some sort of transportation. Other teachers had such inadequate facilities, that when weather permitted, it was preferable to move the class outside under the shade of a tree.

On October 31, 1954, housing improved considerably when we moved into the new Edgewood High School on 34th Street. The new high school was built entirely with PL 815 federal impact aid funds. The quality of the construction was superb, with the exception of a lack of air conditioning, window blinds, carpeted areas and other provisions which may be considered common today, but were inconceivable luxuries at the time.

I was assigned to a biology lab that had running water, but no containers; gas jets, but no Bunsen burners. There were no science materials or equipment, and there was no money budgeted for their acquisition. It seemed strange to be teaching biology in the absence of a single microscope in the entire high school. Other teachers had similar experiences. The absence of materials and supplies was a standard and inevitable characteristic of the school.

In 1959, after having served three years as vice principal at Edgewood High School, I was appointed principal of the Stafford Elementary School in Edgewood. I was only 28 years old, and thank goodness, I was young, strong, dedicated and hard working. It was by far the toughest job I have ever held in my entire life.

Stafford had an enrollment of more than 1,200 students. This was a larger enrollment than the enrollment of more than two-thirds of the school districts in the State of Texas. The 1,200 students were taught by 40 teachers under the direction of the principal. There were no other educational, secretarial or support personnel, other than three janitors and two cafeteria workers. There were no assistant principals, counselors, librarians, special or resource teachers, teacher aides, or anybody else not carrying a full-time load of teaching 30 to 40 students. A school nurse would visit the campus for half a day every week, leading to a commonly heard joke that students be asked to schedule their injuries and illnesses on that specific half day.

The lack of non-teaching personnel created a conflict when I had to go to the district office to submit reports or attend principals' meetings. The common practice was to have the sixth grade teacher assign a mature student to the office to answer the telephone and take emergency messages.

The typical school day started before 7:00 a.m., unless it was very cold and necessary for me to be there earlier to assist the one janitor available during the day in lighting the classroom gas heaters so that the rooms would be tolerable by the start of the school day. The day typically ended after 6:00 p.m., unless there were meetings of the PTA, community groups, Boy Scouts, Girl Scouts, Cub Scouts or Brownies. In such a case it was desirable, and often necessary, to stick around and make sure that there were no problems, such as scoutmasters, chairpersons or sponsors not showing up or needing special materials or equipment. At some time or another during my three-year tenure, I substituted for the leadership in every one of these groups.

In addition to the educational leadership role, the job of sole administrator required textbook distribution, librarian duties, preparing attendance reports, parent liaison, counseling, nursing, play group supervision and daily cashiering in the school cafeteria.

In the absence of any kind of clerical help, the job of principal required an extensive amount of money management. The San Antonio Savings and Loan Association had convinced higher authorities of the desirability of teaching thrift by having school personnel open savings accounts for pupils, collecting deposits and submitting them to the savings and loan each week. Since branch banking did not exist at that time, school patrons found the school a convenient and inexpensive way of sending their savings to the downtown savings and loan. The teaching of thrift was more than successful if determined by the amount of money collected and forwarded by the teachers, totaled and reported by the principal and turned over to the armored car collectors that came by each Wednesday afternoon.

The same money collection and reporting was performed for the American Red Cross, school pictures, seed sales and extensive fund raising activities by the PTA and other community groups. Many of these fund raisers were helpful since the district had no funds for materials, supplies and instructional aids. A very supportive PTA provided all of the audio-visual and other instructional equipment found in the school.

Unfortunately, all of the clerical responsibilities left little time for providing assistance to the many inexperienced and emergency certified teachers on staff.

After six years at St. Mary's University and two years with the Southwest Educational Development Laboratory in Austin, I returned to Edgewood in 1969 as superintendent of schools. Clemente Saenz, president of the board of trustees, recruited me for the job. I had informed him that I would not even consider it unless I was offered the position by all seven of the board members. Much to my surprise, each of the board members contacted me and made an individual job offer, and during the four years that I held the position, they all consistently provided me with full backing and support. I do not remember ever making any recommendation for policy or action in the four years I was there that was not enacted unanimously by the Edgewood board.

Many years later, I said to Clemente Saenz, "If I had known the financial condition of the Edgewood School District, I would have never taken the job." To which Saenz replied, "I know it. That's why we didn't tell you."

I know of no other more challenging educational position than becoming the chief executive officer of the poorest school district in Texas with an overexpenditure of $500,000 in the Capital Outlay Fund, another $500,000 overexpenditure in the General Fund, a minimum foundation program that did not provide enough funds for a minimally adequate instructional program, and a requirement that the district raise all of the funds for the facilities required for a rapidly growing student enrollment. Not only did the district not have sufficient facilities for the 20,000 students enrolled, the federally sponsored Model Cities Program was planning on building 16,000 multiple-family units in Edgewood, which by the most conservative estimate would have brought at least 32,000 additional students into the district.

It is difficult to describe, as well as to comprehend, the characteristics of low wealth school districts in Texas prior to the decades of school finance reform. As in many other social issues such as segregation and civil rights violations, many people would rather forget past inequities in the light of an improved status. I believe that it is wrong to forget the past and let bygones be bygones.

The school finance reform effort, as is the case with other social issues, has not been completed. The current status is a specific point in a years-long continuum, and the current status can only be understood in terms of the horrendous past as well as the hopes for a more ideal future.

George Santayana observed that a people ignorant of its history are doomed to repeat the mistakes of the past. Santayana's wise observation has never been more relevant than it is today, as states and the entire country refute the benefits of social programs, and with a resurgence of individual and corporate greed, the complexity of old social problems and the rise of new ones, everyone aches for a return to the days of yesteryear when "things were simpler and everyone was happy." It is imperative that the horror stories of school finance inequities be known, lest we initiate a regressive trend that will erode the gains and recreate the context of a mythical era when such problems did not exist, simply because nobody would look at them.

The school finance situation was so bad and its impact upon educational opportunity so extensive, that it is difficult to determine a sensible approach. One way of analyzing the pre-*Rodriguez* situation is by following the organization used in my textbook, *Multicultural Education: A Generation of Advocacy*[10] (pp. 501–530), to describe a new educational paradigm for the education of atypical students. This is the same organization of student needs I presented to the federal district courts in *U.S. v. Texas* and *Keyes v. Denver.*

Philosophy of Education dgewood was, and still is, a minority school district. Ninety-five percent of the students were Mexican American, approximately 3 percent were African American and only 2 percent were anglo white. The district was a pocket of poverty within the city of San Antonio. Ninety percent of the students were economically disadvantaged. About the same percentage were limited English proficient, i.e., English language skills were below the standard for a specific grade level.

Although there are notable exceptions, the general attitude was that ethnicity, economic circumstances and language characteristics had doomed the students into very low levels of performance. Through 1969, no special effort had been conducted to alter the instructional program to take into account cultural, language, economic or other circumstances. Teaching materials and methodologies were very similar to those used in much more affluent sections of town, although there was an extensive amount of watering down of the instructional program through slow movement through content and the endless repetition of learning activities. As in other minority and low socioeconomic schools, levels of expectancy were very low, and the students did not hesitate to perform at this low level commonly expected, and oftentimes demanded.

There was no effort at student maximum self-realization, and if there had been, it would have made no difference. The potential perceived in these students was so low that poor performance was considered normal and satisfactory.

I encountered three salient goals of the school for this type of student. The first salient goal is to teach them basic skills with no regard for higher order thinking skills or advanced course work. Calculus, geometry, physics, microbiology, world history, creative writing and economics were not even offered in the secondary schools. Few students were enrolled in algebra; most took remedial arithmetic under a variety of euphemisms such as business math, pre-algebra, etc. I visited many algebra classes in which most of the instruction consisted of the fundamental skills in addition, subtraction, multiplication and division. I sometimes encountered teachers going through the motions of teaching quadratic equations to students who could not even multiply and subtract. The academic goals for minority and economically disadvantaged students commonly strive for low levels of proficiency in reading, writing and arithmetic.

When I was director of the Southwest Educational Development Laboratory (SEDL)'s Migrant Educational Center, I visited with and spoke to a number of communities where large numbers of migrant agricultural workers were employed. I spoke about the need for improved educational opportunities for such children. One person in the audience raised his hand and asked the following question, "If all of these migrants get educated, who is going to pick our crops?" The many nods of agreement in the audience indicated that their needs for cheap labor superseded the educational needs of migrant students. My recommendation that he try picking his own crops was not well received.

The second salient goal I encountered for minority and economically disadvantaged students was teaching them how to follow orders. The students' racial/ethnic and socioeconomic characteristics predestined them in menial jobs, and the schools prepared them for a lifetime of low-level blue collar labor. An anthropologist from The University of California at Berkeley that I did some work with told me that while visiting a school with a large Hispanic student enrollment, he asked the teacher why anglo students were always assigned as classroom monitors and minority students were never given such assignments. The teacher candidly replied that the anglos would eventually be in managerial positions, and it was desirable to start training them early in the management of minority personnel.

The third salient goal I encountered was good behavior. Good behavior was a means to an end as well as an end in itself. My apprehensiveness over its being a salient goal in the education of atypical students is the implication that "good behavior" is given unique priority for these students in order to make them more manageable by cultural mainstream populations. I also had severe reservations about the measures that were used in many schools to bring about this exemplary behavior. Corporal punishment was used excessively and indiscriminately. One teacher, a retired military officer, pestered Dr. James Forester, the high school principal, and me at Edgewood High School with a persistent suggestion that male teachers be stationed every morning at each entrance, and every male student be whipped upon coming into the school. When asked about students who had committed no offense, he insisted that the whipping was desirable to keep well-behaved students well behaved. Corporal punishment may have been used in most schools at that time, but it is inconceivable that it be institutionalized for all students, guilty or innocent of detrimental behavior.

Low levels of expectancy were endemic to the Edgewood schools. A principal, considered to be one of the best in the district, continuously commented on how well the students were performing in her school and how proud she and her teachers were of the high level of student performance. I asked, "If they are doing so well, how come most of them are at least two years behind state and national norms on all achievement tests?" Her answer exemplifies professional attitudes toward atypical children. "In spite of being way below norms, I think they are doing very well, *considering the types of students we enroll."*

Low levels of expectancy were almost institutionalized in Texas in 1987 under a plan prepared by Texas Education Agency staff at the request of school superintendents from school districts enrolling large numbers of minority, limited English proficient and economically disadvantaged students. I received an invitation to lunch from Dr. Carl Candoli, deputy commissioner of the Texas Education Agency, who said he wanted to discuss a new accountability idea with me. During lunch, he presented the agency's plan for changing reports of the state-mandated achievement test (TEAMS) scores by using a weighted average (WAVE) score with adjustments for "1. percent of students who were minority (Black and Hispanic), 2. percent of students who were limited English proficient (LEP) and 3. percent of students . . . from families of low income . . ."

The adjusted WAVE scores would inflate student scaled scores, thus giving the appearance that their performance was comparable to mainstream students. The amount of weight added to the scores would be calculated on the basis of the predicted poor performance of students in each of three classifications. Needless to say, the TEA action meant the institutionalization of low levels of performance for all of the students involved.

I informed Dr. Candoli that if such a procedure would be instituted by TEA, IDRA would immediately file an intervention suit in the pending federal desegregation court case *U.S. v. Texas* to have the procedure discontinued. Other school personnel had similarly questioned the advisability of lowering standards for these students based on the assumption that they had limited capability and inherently performed below their nonminority counterparts. Soon afterwards the agency discarded the idea and has subsequently demanded normal performance for minority, limited English proficient and economically disadvantaged students.

Considering the extensive special needs of students enrolled in low wealth districts like Edgewood, it is surprising to note the conservative orientations of many of the members of the boards, administrators, teachers and other school staff toward proposed changes that would increase educational opportunities for students in their schools.

The educational programs of the Great Society era received little attention or support. In some of the poorest school districts the innovations were not welcomed and often were not implemented, or poorly implemented.

Immediately upon being appointed superintendent of Edgewood, but before starting on the job, I contacted the director of migrant education at the Texas Education Agency. As director of the SEDL Migrant Education Center, I had worked with him for almost two years. Upon inquiring about the amount of migrant education funding being provided to Edgewood, I was amazed to find out that Edgewood was not participating in the federal Title I-Migrant program. Knowing from my prior teaching and administrative experience in

Edgewood that there was a sizable number of agricultural migrant students, I requested that an entitlement grant be reserved for the 1969–70 school year. Not having access to district data, I estimated the number of migrant students in the district. Funds for the program were encumbered at the state agency.

When I reported to work in Edgewood in July 1973, I was informed that Edgewood had not participated in the migrant program because there were no migrant children in the school district. I requested that a survey be conducted, but the results of the survey did not reveal a sufficient number of students for effective participation in the program. I then called central office administrators and school principals together and expressed extreme dissatisfaction with their efforts. I mentioned the availability of funds and the potential benefits to the students and again requested that an extensive search be conducted throughout the district with requests for information sent to all the homes. The number of migrant students documented by this last search exceeded my earlier estimate in my request for federal funds.

At first glance it may seem that district personnel were not interested in acquiring funds and participating in the state program. On the other hand, it is possible that school personnel had so little knowledge about their students that they really did not know that they spent a considerable part of the year traveling across the nation in search of agricultural work. In either case, the district apathy was inexcusable.

Early in my tenure as district superintendent, I attended a meeting of school principals being conducted by central office personnel. I was intrigued by a topic being discussed at the meeting. Schools in the district had a common problem of students getting into garbage cans outside the cafeterias and taking waste food from the cans. Most of the discussion centered on the need to provide proper supervision and control of the garbage cans. Immediately after the meeting, I went to the cafeteria director and inquired about the number of students participating in the National School Lunch Program. Since 90 percent of the students were eligible for participation, I estimated that the number could be as high at 18,000. Much to my surprise, I was informed that only 500 students were participating in the program. Providing eligible students a free meal was preferable to physically restraining them from taking food from garbage cans. By distributing school lunch program guidelines and the allocation of federal funds from a variety of programs, the number of students participating in the free lunch program increased from 500 a day to 13,500 within one month.

The increase in the number of students receiving a free lunch was not well received by some of the district's administrative personnel. In a meeting with one of the assistant superintendents, for example, he informed me that I was establishing an undesirable precedent in providing a free lunch for an extensive number of Edgewood students. The main objection was that providing a free lunch would lead to the students' expecting to be fed free for the rest of their lives. The argument was not new to me, and I found it easy to rebut. I inquired about the number of students in Texas receiving free textbooks while attending school. The obvious response was, "Just about all of them through the state textbook system." I inquired about the number of students in Texas being transported free of charge to and from school. This evoked a similar response, "Most of them." I then inquired, "How many times have you heard of an adult requesting free books at a bookstore or free passage in the transit system because they were provided them free in the school?" The response was, "I never heard of a single incidence." "Then why do you assume that if students are provided a free lunch they will expect to receive free food in their adult lives?"

The last question was not answered; the free lunch program continued to be expanded, but extensive opposition and resentment continued among district personnel.

Lack of participation in federal programs was not limited to the Edgewood district. I had encountered such opposition in the past. Some of the opposition stems from a moral perspective and is grounded in sociopolitical ideology, but I have long suspected that most of the opposition stems from a fear of federal intervention and very specifically, federal accountability. Noncompliance with the desegregation court order in *Brown v. Board of Education* and 10 years later with the Civil Rights Act of 1964 was common throughout the United States. Loss of federal funds was deemed inconsequential. It was not until President Lyndon Johnson provided a higher level of federal funding through the Elementary and Secondary Education Act of 1965 that the amount of federal funds which could be lost through noncompliance was substantial enough to lead to civil rights enforcement in many of the nation's schools.

The examples presented above illustrate the lack of sympathy, empathy, understanding, concern, advocacy and support for the characteristics and needs of the students in the poorest school district in the state. Unfortunately, these same shortcomings were similarly prevalent in low wealth districts in many other parts of the state.

Governance Rules and regulations in Edgewood and other low wealth districts enrolling extensive numbers of minority and economically disadvantaged students were consistent with the substandard philosophy of the districts. For the most part, the rules and regulations were carbon copies of governance in higher wealth districts which enrolled middle class students from the cultural mainstream. Most of the rules were dysfunctional; many were counterproductive.

For example, minority school districts enrolling a large number of migrant students were plagued by the loss of average daily attendance, and subsequently state financial aid, because of the students' withdrawing early in the year and reporting late while the families pursued agricultural employment throughout the country. Instead of changing the formula for the provision of state funds to accommodate these students, the common administrative response was to enact local regulations that stipulated that students withdrawing early in the year or reporting late would become ineligible for school credit, regardless of how they performed while in the school system.

Such regulations give little consideration to agricultural work and migrant travel being an economic necessity, or to the impact on the structure of the family if some of the children remain behind with relatives or friends while the parents travel for extended periods. An assumption is made that migrant children have the same lifestyle as middle class children and that school absence should be dealt with in similar ways. Migrant children are first victimized by the economic system; then they are punished by the schools for having been victimized.

When I was vice principal at Edgewood High School, I received a request from a student asking that she be allowed to drop her English course during the last semester of her senior year. An inquiry with the teacher indicated she was performing well, but dropping the required course would mean that she would not graduate with her class. After extensive discussion, she indicated that the real purpose of dropping the course was so that she would not graduate with her class; however, she intended to take the course during the summer and graduate a few weeks later. Her reason for not graduating with her class was that the family could not afford dresses for the senior prom and the graduation dance, nor could they afford the school annual, class and individual pictures, the senior ring, invitations to the graduation ceremony, the cap and gown rental and other expenses associated with high school graduation. Peer pressure was such that she found it easier and considerably less expensive to finish school during the summer.

This experience taught me that the customs, traditions, rules and regulations developed in middle class schools may not be appropriate for the students in the poorest section of town. I do not suggest that disadvantaged children should not have access to class rings and the rest of the graduation rigmarole. I am suggesting that the various elements in the graduation ritual should be handled discretely and not publicly, so that the economically disadvantaged student may graduate without being stigmatized.

As a teacher and administrator in the Laredo and Edgewood low wealth districts I was very sensitive to the impact of student fees. At the time, it was a common practice for students to have to pay special fees for the use of laboratories, typewriters, lockers, gym towels, special books and other school needs. Such fees created another obstacle to educational opportunity for atypical students. I was not able to eliminate all the fees as an educational administrator, but shortly upon becoming director of TEE/IDRA in 1973, I did initiate a request through official channels for a state attorney general's opinion of the legality of such fees. The attorney general ruled that the imposition of such fees was in violation of the state constitutional mandate for a system of free public schools, and the practice was eliminated without a need for legislative or court action.

Scope and Sequence Public school instructional programs in the United States were developed by and for a white, Anglo, middle class, English-speaking population. Although there is considerable debate on how well the educational system serves this population, a preponderance of evidence documents that it has poorly served the non-white, the non-Anglo, the economically disadvantaged and the limited English proficient native and immigrant populations.

There is a popular myth in the United States that large influxes of European immigrants achieved cultural integration and socioeconomic upward mobility as a result of the public schools. This simply is not so. Schooling was a rare commodity for immigrant populations, and when it was available, it was usually provided in the private sector, often by parochial schools operated by religious orders that accompanied or immediately followed the immigrant group. Upward mobility and acculturation was afforded by extensive employment opportunities characteristic of the Industrial Revolution and the accompanying building of large metropolitan centers in the northeastern part of the country.

Public schools have done little to accommodate atypical populations, and what little has been done has been at the instigation of state and federal courts, rather than on the initiative of the local political or educational leadership. Adaptability to the characteristics and needs of minorities were so minimal, that even the segregated black and Hispanic schools were a misnomer. They were not black or Hispanic schools; they were white schools attended by black or Hispanic students. For example, as an elementary school student in the 1930s, I sat in a classroom trying to participate in an all-English instructional program, although I, and most of the students, spoke little English. In the 1950s, I was mandated by state law to teach only in English in spite of the all-Hispanic enrollment having little proficiency in the language. At the beginning of my tenure as superintendent in Edgewood in 1969, little had changed.

I can only wish that other cultural characteristics had been similarly ignored. Instructional materials were full of misinformation on minorities and there was an extensive use of racist negative stereotypes. Little attention was given to prerequisite academic skills easily acquired by children in middle class homes but frequently not available to children in economically disadvantaged homes. Instructional programs were chronologically arranged with little regard for its impact on mobil populations, either travelling in pursuit of agricultural labor or in the similar educational discontinuity produced by urban geographic mobility.

The elementary instructional content in Edgewood differed little from that in most other school districts, in spite of the population being 98 percent minority, most of them economically disadvantaged, and the vast majority being limited English proficient. This "one model fits all" mentality has been a salient characteristic of education in the United States, and it is only in very recent years that there has been a modest attempt at adaptation of the school to the characteristics of its students.

Staffing Of all the problems of low wealth school districts in Texas, I perceived staffing as the most common and the most pervasive and the one which had the most severe educational consequences. In Edgewood I found some of the best teachers it has been my privilege to work with; I also found some of the worst.

During the "Baby Boom" years, there was a severe shortage of teachers. The shortage still persists through the 1990s in a variety of critical areas such as pre-school programs, bilingual, special education, math, science and technology. In the 1960s and 1970s, it was very difficult to recruit teachers in a school district that offered a minimum salary, few fringe benefits, inadequate facilities, overcrowding, a lack of materials and supplies, and less than tolerable working conditions when all other districts in the community were offering more advantages. Prior to the school finance reform effort, low wealth districts did not even try to compete with their wealthier neighbors. The available labor pool to low wealth school districts consisted of applicants with limited training and experience and unable to meet the minimum state requirements for teacher certification. These included some college graduates who had not taken or completed the professional course sequence, college students short on meeting graduation requirements, personnel retired from other occupations seeking a second career, and in some cases teachers found inadequate by other school districts. There were applicants who did meet all requirements and chose to teach in the challenging environment of a poor school district, but their numbers were disappointingly few.

In keeping with state regulations, just about anyone could be hired by the state's issuing a temporary emergency certificate, as long as the new teacher would work out a "deficiency plan" with a college which had an accredited teacher education program. The plan provided for the removal of deficiencies over a period of time. In 1969, more than one-half of all of the teachers employed in Edgewood had emergency certificates. The removal of these deficiencies became my highest priority as superintendent, and I acquired and allocated extensive funds for this purpose. Through the federal Title 1 and Title 1—Migrant, Career Opportunities Program, Urban/Rural Program, Youth-Tutoring-Youth, Bilingual Program, Experimental Schools Program, Model Cities Program and others, more than $1 million a year was budgeted and spent in the training of teachers in Edgewood.

In retrospect, I believe that the effort was successful. The number of uncertified teachers declined considerably, and job satisfaction increased to the point that when I left the district in 1973, the turnover rate for teachers was a normal nine percent. After my departure there was a de-emphasis on innovative and responsive programs, and there was considerable regression in the district's teacher retention rate. But, if nothing else, the extensive teacher training program in Edgewood did provide many certified teachers to other school districts in the community.

In at least one case, the exodus of teachers from Edgewood involved an entire program. Edgewood was a state and national leader in the implementation of bilingual education programs. Other school districts in San Antonio also started early programs in bilingual education, but the majority did nothing until 1981 when a ruling in the bilingual education intervention suit in *U.S. v. Texas* led to a court mandate for bilingual programs for limited English proficient children. Although the state appealed this ruling, the issue became moot when the Texas Legislature enacted Senate Bill 477 which made bilingual education a legal requirement in the state.

By the time of the enactment of the bilingual law, Edgewood had the best trained and most experienced bilingual teachers in Texas. When neighboring school districts were suddenly forced into offering a bilingual program, one of them solved the staffing problem by providing high salaries and supplemental financial incentives to the Edgewood staff. They were successful in employing the Edgewood director of bilingual education, virtually all of the teachers and even many of the trained teacher aides. The higher wealth district started a high quality bilingual program that year with highly trained and experienced staff. The limited English proficient children of Edgewood were again taught by untrained, inexperienced and uncertified personnel.

Immediately following the end of the Korean War, a large number of personnel separated from the U.S. armed forces were recruited and employed by the Edgewood School District. The number of former military personnel was exacerbated by military incentives that provided for early separation from the military if enlisted personnel were to be employed in the schools. Cutbacks in military personnel, which invariably follow a war, also provided early retirement to military officers.

As vice-principal at Edgewood High School, principal of Stafford Elementary School, and subsequently as superintendent, I had ample opportunity to supervise large numbers of military personnel in teaching positions. The use of former military personnel as school teachers surfaces as an innovative idea periodically. Not too long ago former Secretary of Education William Bennett and former Secretary of Defense Casper Weinberg suggested that critical teacher needs could be met by the use of retired military.

I did not find them the strong resource indicated by advocates of staffing schools with former military personnel. Dealing with adult military personnel with an extensive array of punitive measures including incarceration was poor preparation for dealing with children. For the most part, any subject area skills that these teachers brought into the classroom were more than offset by a lack of understanding of the psychological and pedagogical characteristics and needs of the students. The only exception to this finding were military personnel who went through regular teacher preparation programs and who had the necessary professional skills and personal interest in youth.

In spite of extensive reform in the system of school finance, low wealth school districts still face formidable barriers in staffing. Disparities in funds available in support of education have been narrowed, but not eliminated. As a result of the consistent failure of the high court and the legislature to address disparities in capital outlay, there are still big differences in the quantity and quality of facilities, furniture and equipment among districts of different wealth. High wealth districts not only provide high salaries, but they offer better working conditions for school staff.

Curriculum The instructional program in Edgewood was most inadequate in that virtually all of the students fell into some type of atypical classification but received the same instruction developed for students for the cultural mainstream. Both materials and methodologies were most inappropriate, but the school district did not have the financial resources for the identification, acquisition, adaptation or development of instructional alternatives.

Even traditional materials were in short supply. Books furnished by the Texas free textbook system could not be supplemented by any materials. Libraries were small, obsolete, unstaffed or nonexistent. Laboratory equipment and supplies were frequently not included in the school budget, and even basic materials such as paper, pencils, maps and audio-visual aids were furnished by benevolent PTAs or purchased with personal funds by the lowest paid teachers in the state. It was common practice for teachers to purchase a supply of chalk at a school materials store and hoard it during the school year.

Even the advent of massive federal aid to education in the 1960s proved inadequate. All of the federal programs were designed to supplement local and state efforts, not to supplant them. Unfortunately, it is poor policy to build upon an inadequate, inefficient or non-existing foundation. Many of the federal programs were early institutionalized into "remedial" programs that were low level, slow paced, repetitious, boring and unsuccessful. Many of these remedial programs are so institutionalized that I suspect that the regular school programs are under pressure to produce a substantial number of poor-performing students to feed into the remedial system.

The basic rationale of most remedial programs is that the student performs poorly because of a lack of mental and academic capacity. The pedagogical prescription seldom consists of changes in the instructional program; the prescription consistently increases the dosage of the ineffective medicine. Therefore, massive numbers of students who do not perform adequately during a school year are retained in grade and given a second dose of the inadequate program. School days are extended, days are added to the school calendar, and evening and summer programs are implemented. It is impossible to determine why a teacher unable to teach the students during a nine-month period is expected to do better in a longer period of time. Remedial programs are commonly based on the fallacious belief that students will eventually learn by the school doing the wrong things longer, doing the wrong things more often and doing the wrong things better.

Since my introduction to the Edgewood District in 1953 and through the 1990s, school facilities have been lacking, inadequate and inefficient. As in most low wealth school districts that do not have adequate tax bases to provide facilities at local expense and in the absence of any, or at times token, state aid, the facilities are deplorable. The obvious inadequacies of facilities may be no worse than the inadequacies of the instructional program, but facilities are very tangible and they can be easily perceived, whereas instructional programs are relatively intangible and difficult to assess.

Co-curriculum The limitations of the school curriculum in Edgewood were magnified in the co-curriculum program. The minimum foundation program at least provided for instructional personnel; there was no such provision for co-curricular activities. Coaches, band and choir directors, as well as class and club sponsors were hired as instructional personnel with a detrimental effect on the instructional program. If co-curricular personnel had no teaching duties, their student load had to be absorbed by the other teachers. As a result, most co-curricular personnel had some amount of teaching responsibility, not an optimal situation since co-curricular duties required extensive preparation, paper work and travel, which were usually attended to at the expense of their classroom students. In addition, many of the co-curricular activities were supervised by teacher volunteers without any remuneration or relief from their regular instructional assignments.

The students participated in interscholastic competition, severely handicapped by an inadequate amount of coaching and a shortage of equipment. Edgewood students' consistent lack of success in interscholastic competition must have had a serious impact on their self-concepts and was frequently attributed by them and their competitors to their minority status, rather than to the lack of adequate resources for preparation and training and a fair chance for success.

Student Personnel Services The limited financial resources available to the Edgewood School District also precluded extensive services to students. In 1953, there were two counselors serving students in the entire school district. Neither of the two counselors spoke Spanish, and on more than one occasion, I served as translator for the administration of Wechsler, Stanford-Binet and other individually administered standardized tests. In 1955, a full-time counselor was added at Edgewood High School. As a result of the federal Elementary and Secondary School Act of 1965, additional services were provided with federal funds, but even this windfall proved inadequate.

The same personnel problems in the hiring and retaining of instructional staff characterized student personnel services. Many of the staff were untrained and inexperienced, and when they completed their training, obtained necessary certification, and acquired sufficient experience, they were quickly recruited and hired by the wealthier school districts with higher pay scales and superior working conditions.

Non-instructional Needs The primary responsibility of the school is the physical, social, emotional and intellectual development of its students. In addition to the instructional needs of children, there are important non-instructional needs that must be met. There is extensive professional disagreement as to how these needs are to be met, and who has the responsibility for meeting them. Granted that the primary responsibility for non-instructional needs rests with the parent, but it is sometimes difficult for the parent to fulfill this role with an annual family income of less than $10,000 a year. In such cases children and their families need support from social agencies sponsored by government, charities, religious groups and other entities which try to provide a safety net for the needs of children.

Unfortunately, the need is great, and such entities have limited resources, a narrow scope of involvement and limited efficiency to guarantee that all needs are being met. The school is not responsible for providing for all of the non-instructional needs of children, but it is in the interest of the school to ensure that unfulfilled needs do not become an impediment to learning. It is difficult to teach a child who has not eaten for several days and who cannot maintain an attention span long enough for successful performance in school. Children who are sick, who do not have clothing or shoes, or lack transportation, cannot attend school. The least that the school can do is to draw upon other community organizations so that the non-instructional needs of students can be met, thus eliminating impediments to schooling, and resulting in a higher propensity for learning.

In the past, community agencies in Edgewood put forth a super-human effort in providing the necessary social services. The Stella Maris Clinic supported by the Sisters of Divine Providence provided basic medical services, the Madonna Neighborhood Center provided social services and the school PTAs were very efficient in obtaining shoes and clothing for needy children; however, demand easily outpaced their limited supplies and services.

There were few physicians practicing in the district and only one dentist. Edgewood had a cadre of well-trained and efficient school nurses, but the number that could be hired by the district was so small that the nurses could visit each school a maximum of one-half day per week. Referrals to city and county medical services were constrained by geographic distance and the families' lack of transportation. Many children grew up in the district without ever once being seen by a doctor or a dentist.

It is evident that for many children the need for the basic physical requirements of food, potable water, clothing and shelter was a serious impediment to schooling.

Parent Involvement The parents of the children in Edgewood were one of the few bright lights in the district. They very much reflected the close-knit family structure of Mexican American culture. The family structure was not only intensive, it was also extensive, with the nuclear family being supplemented by extended family with specific roles in providing supportive structures for children.

In the dozen years in which I worked in Edgewood, I never once encountered a parent who was not concerned, interested and supportive. I am sure that there are some parents who have little interest in their children, parents whose drug dependence and other debilitating and incapacitating conditions supersede their parental responsibilities. I just never encountered them in the 12 years I worked in the district and the 30 years that I have worked with the district. Even if there are irresponsible parents in Edgewood, as well as in other low wealth and minority districts, I have learned that parental irresponsibility is not a salient characteristic of the low socioeconomic classes. During my lifetime and in my 45 years as a professional educator, I have encountered more irresponsible parental behavior in the upper socioeconomic classes than I have in the lower classes.

Nonetheless, the amount of rapport that the Edgewood parents had with the school was severely constrained by a number of barriers. Although in 1953 when I started teaching in Edgewood, approximately 90 percent of the students were Mexican Americans, staffing in the district was not reflective of the ethnicity of the population. Mexican American teachers were the exception, rather than the rule. In 1955, when I was appointed vice principal of Edgewood High School, I became the first Mexican American administrator in the history of the 90 percent Mexican American school district. Fourteen years later, I was to become the first Mexican American superintendent.

This incompatibility of staffing produced problems in the relationship between school and home. The values of the minority home frequently clashed with the values of the school as a mainstream institution. In this clash of values, the school assumed a position of superiority, to the extent of maintaining that it knew best what was good for the child. The school not only failed to support home and family values, it even attempted to destroy them. Even to this day, I frequently hear pleas for the home to support the schools. Even in the higher socioeconomic levels, I seldom hear of the need for the schools to provide support for the home. In Edgewood, parents were seldom treated as equals in the relationship between home and school.

There was an extensive language barrier between the parents and the school staff. On numerous occasions I personally observed parents visiting the school to communicate concerns about their children's performance, only to leave in frustration without finding someone who could understand and speak their language. This problem was further magnified by negative attitudes many school personnel hold about using the Spanish language. In some schools the use of Spanish by speakers of the language was discouraged, and in some cases even prohibited. PTA meetings were conducted in English which precluded meaningful participation by 50 to 80 percent of the parents in the various schools. The attitude of the time that it was preferable not to communicate than to communicate in a language other than English was similar to the attitude being promoted by English-only activists today.

The poverty of most of the district's residents also clashed with the school's middle class orientation. It was unusual for school personnel to understand the financial limitations of poverty. In the early days of my teaching and administrative career I was as guilty of this lack of comprehension as any other staff member. I can remember my arguments with migrant parents who withdrew their children from school and my chastising them for moving prior to the end of the school term, with little sensitivity on my part to the financial realities of migrancy. As so many professionals before and since, I had little understanding of the debilitating effects of the struggle for economic survival.

In general, when interactions between the school and the home did occur, such interactions were inevitably negative. While working with the Southwest Educational Development Laboratory in Austin, we conducted a survey on school attitudes of migrant parents. A specific question in the survey was, "Have you visited your child's school this year?" The consistent response given with an extensive amount of pride was, "No, I haven't. My child has not gotten into trouble this year."

(For a more extensive treatment of this subject and suggestions for improved family/school relationships, see *Hispanic Families as Valued Partners: An Educator's Guide*, by María Robledo Montecel et al.)[11]

Barriers to communication and negative relations between home and school have created the myth that minority and economically disadvantaged parents do not place a high value on education. Nothing could be further from the truth. I found early in my educational experience that if there was any difference in the perceptions of education among parents of mainstream and atypical populations, it was that the parents of atypical children tended to overestimate the value of an education. Poor and minority parents tended to see qualitative rather than quantitative differences between the educated and the uneducated. They recognized and accepted these qualitative differences, painfully aware of them, but similarly aware that an education and its advantages were simply beyond their children's reach. And our elitist system of education has made this perception a reality. It is difficult to conceive that children faced with the inadequacies of a low wealth school district could go very high up a steep and oftentimes highly competitive educational ladder.

Since the end of World War II, minority and economically disadvantaged populations have been changing their perceptions of educational opportunity. After serving and sacrificing in World War II, and a disproportionately high effort in Korea and Vietnam, aspirations for the good life improved drastically, and minorities sought the same equitable treatment they had experienced in their defense of the American way of life. By 1969, the people of Edgewood were demanding better educational opportunities for their children. This created a dangerous and explosive situation. Their desire for education to provide an avenue for socioeconomic mobility for their children was frustrated by the inadequacies and inequities in the Texas system evidenced in the Edgewood schools.

Early attempts for local reform were frustrated by a common failure to identify and recognize the culprit in the system. Although I acknowledge extensive shortcomings in school staff's attitudes and practices in low wealth districts, improvements in staffing and educational practice were severely constrained. The low wealth districts did not have the necessary funds for recruiting, acquiring and retaining adequate staff. They lacked funds for instructional materials, equipment and facilities to create, develop and nurture better school programs. The members of the Edgewood Concerned Parents Association were so disgusted with the educational performance of their district that in 1968 they filed a lawsuit against the district, seeking an end to the financial inadequacies of the system.

Community Involvement Aside from its legal status as an independent school district, the Edgewood School District is simply a neighborhood in San Antonio. The area has nothing in common with other political lines, nor does it adhere to any other geographic or natural boundaries. In fact, one of the school district boundaries passes through the middle of a house, with the kitchen being in Edgewood and the bath and bedrooms being in the San Antonio School District. The Edgewood District comprises approximately 14 square miles of the city of San Antonio, bounded on the north by Culebra Street, on the south by Kelly Air Force Base, on the west by Callaghan Road and on the east by a line intersecting 24th Street. The arbitrary juxtaposition of the district boundaries was to become a very important point in both federal and state school finance litigation since it was impossible for the state to provide any compelling need in establishing and maintaining the Edgewood boundaries.

In an overview of the Edgewood School District presented in a successful 1972 proposal for a U.S. Office of Education Experimental Schools Program grant,[12] the following demographic information was presented.

> A recent survey of the parents of the children in the district's 25 schools revealed that only one-half of one percent (.05 percent) are in professional occupations. 10 percent are in skilled labor, and 80 percent in unskilled labor occupations. Unemployment, substandard housing, and a scarcity of health, sanitation and other public services typify the area.
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> As far back as 1967, a U.S. Department of Labor study, *Sub-Employment in the Slums of San Antonio,*[13] noted that: ". . . the sub-employment rate in that area [the hard-core slums of San Antonio, including most of the Edgewood District] . . . is a startling, sobering 47.4 percent." It was noted in this survey that: "70 percent of the unemployed did not graduate from high school; 48 percent of the unemployed did not go beyond the 8th grade; 6.5 percent had not gone to school at all."
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> Further information about educational attainment comes from a 1971 Urban Renewal study of the Model Neighborhood Area (one-third of which is in the Edgewood District) shows: ". . . that 18.8 percent of the respondents (1,260 persons) have no formal education, 41.3 percent have 1–7 years of school, 9.8 percent have 8 years, 15.5 percent have between 9 and 11 years, 11.3 percent have 12 years, 2.5 percent have between 12 and 15 years and 0.3 percent have 15 or more years."[14]
>
> This study also showed that respondents with 12 years of education or less had family earnings of less than $3,000 per year.

Achievement data presented by the district in the proposal indicated that the typical student by the end of the third grade was performing one full year below national norms; by the end of the sixth grade was performing 1.5 years below national norms; and by the end of the seventh grade was performing two full years below national norms.

The inadequacies of funding and instructional programs were accompanied by a similar inadequacy of accountability. It is inconceivable that a school district enrolling a mainstream population with a similar deplorable academic performance would be given by the Texas Education Agency the fully accredited status given to the Edgewood District. The low levels of expectancy for student performance in low wealth minority districts were accepted and reinforced at the state level.

Since its creation, Edgewood has had a stepchild relationship with other political and educational entities. Originally, it was a part of the Bexar County system of schools. Texas law provided for the incorporation of independent school districts, directly responsible to the state education agency and completely independent from city and county governments. County school districts became dissatisfied with being governed by the county and being in constant competition with other county services for the tax dollar and opted for incorporation as independent political entities with their own taxing power and the legal status of quasi-corporations.

The Edgewood community had very low-cost housing for a predominantly minority population, with virtually no business or industry. The area simply had too many children, they were found difficult to teach and it had too low a tax base to support an educational program under the existing system of school finance. It was left behind as other communities incorporated as independent school districts.

The creation of the present Edgewood Independent School District by exclusion, particularly the reluctance of other districts to incorporate a large minority population, presented early and interesting prospects for a school finance court case. Bob Brischetto and I at TEE were aware that the Del Rio and San Felipe school systems had been merged by a court order after such a finding in the Del Rio intervention suit in *U.S. v. Texas*. The legal point of illegal incorporation was never pursued, mostly because of the fear that the legal remedy would be the abolishment of the Edgewood district, rather than the abolishment of the inequitable Texas system of school finance.

When I was superintendent between 1969 and 1973, the biggest taxpayer in the Edgewood District was the Southwest Bell Telephone Company. In 1970–71, Edgewood had taxable wealth averaging $5,147 per pupil compared to a state average of $52,600 per pupil and a state high of $10,862,838 per pupil. (Cárdenas, José A. and Robert Brischetto, *Texas School Finance Data*, Texans for Educational Excellence [TEE], March 1974)

Property values of the low cost housing were further depressed by its stepchild relationship with the city of San Antonio. When I started teaching in Edgewood in 1953, there were only four or five paved streets in the entire district, and there were no sidewalks. After a hard rain, water and mud made the streets impassable, and it was not unusual for more than half of the students to be absent from school. In a 1972 conference on school finance, I mentioned during an argument over the use of enrollments or attendance for calculating state aid that ". . . our [Edgewood] personnel office has estimated that every time it rains in the Edgewood school district between 6 and 9 a.m., we lose 12 teachers in our school system under the existing [state funding] formula."[15]

The western part of the district was not provided water or electricity by city-owned utilities. As a teacher at Coronado Elementary School I remember the children smelling of kerosene fumes when they arrived at school. Water was purchased by the barrel from an entrepreneur that distributed it from a tank pulled by a pair of mules. Each house had a drum in front from which the occupants drew their drinking and washing water as needed during the day. By 1961, the only improvement in the distribution of water was that the mules had been discarded, and the water tank was pulled by a John Deere tractor.

Edgewood had many problems of its own, but it also had problems stemming from external sources. Sometime in the 1950s a concrete culvert had been constructed as a flood control measure in the northwest part of San Antonio. Rainwater collected and was channeled through this culvert running for miles with its southern end terminating on Culebra Street at the southern boundary of St. Mary's University. Culebra is also the northern boundary of Edgewood, and all the rainwater collected from northwest San Antonio was dumped in the Edgewood district. I once took San Antonio Mayor Charles Becker to the site, and he could not believe what he saw. He initiated some action, but it was not until a grass roots organization, Communities Organized for Public Service (COPS), made it an organizational political issue that the flooding problem created by the dumping of runoff water from other parts of town was resolved.

Approximately one-third of the Edgewood district was a part of the federally funded Model Cities Program of San Antonio. This one-third of the district (5 square miles) was targeted for the construction of 16,000 rent subsidized multiple-family housing units by the Model Cities Program, which would probably have made it the most densely populated slum area in the United States. This construction was to take place immediately after the Kerner Commission, which investigated the civil disorders of the 1960s and concluded that much of the blame for the disorders should be placed on the high density of minority and poor people in rent-subsidized housing in each of the cities experiencing the riots.

Discussions with San Antonio Mayor Walter McAllister about the educational and social impact of 32,000 additional students in a district that could not provide for the education of its 23,000 students proved fruitless. Each interaction with Mayor McAllister was prefaced and ended with his consistent statement, "The problems of the Edgewood School District are of no concern to the city of San Antonio."

A federal court suit initiated by the Edgewood district at my recommendation resulted in a partial victory for the school district. Although the court did not enjoin the building of additional multiple-family housing units, it did require that the building effort be coordinated with the educational system. Most contractors and their sponsors felt it preferable to move planned development out of Edgewood and across Culebra Street and Callaghan Road into the Northside School district, which immediately changed from a school district with a 25 percent minority enrollment into a district with a majority enrollment of minority students.

The business community was just as unsympathetic to the plight of Edgewood as were the political entities. Edgewood was seen as a plentiful source of cheap labor prior to cheap labor becoming an obsolete and unwanted resource with the advent of information, service and high technology industries.

During my tenure as superintendent, Edgewood High School with almost 100 percent minority enrollment won a district football championship. In the playoffs, our team played against Lee High School in the Northeast School District which had only a 10 percent minority enrollment. The game was a disaster for Edgewood. The Lee team was quarterbacked by Tommy Kramer who was destined to become All-American at Rice University and a star quarterback for the Minnesota Vikings. Prior to the playoff game, advertisements appeared in the local newspapers supporting the Lee High School team and wishing them luck. Advertisers included many businesses not located in either district. I asked the owner of a car dealership why the agency located in downtown San Antonio supported a team from one section of town over another. He responded that the Lee team was comprised of his people, whereas he had nothing in common with Edgewood. It is difficult to expect businesses with this type of a mentality to be sympathetic and supportive of Edgewood's quest for school finance reform.

FEDERAL PROGRAMS

Upon my appointment as superintendent of Edgewood in 1969, I immediately put to use the grantsmanship skills I had learned from Dr. Ed Hindsman and Roger Barton at the Southwest Educational Development Laboratory in Austin. Since in addition to serving in Edgewood I also spent extensive time in Washington, D.C., in the development of innovative programs for atypical school populations, the district became the recipient of a large number of federal grants. At one point, I was informed by U.S. Congressman Henry B. Gonzalez that the Edgewood School District was receiving more federal funds per pupil than any other district in the nation. In addition to the regular entitlement programs such as Title I and Title I-Migrant, the district obtained grants for additional free lunches, pilot cafeteria programs, land acquisition (Model Cities), school buildings (Model Cities), teacher training (Urban/Rural and Career Opportunities Program), Youth-Tutoring-Youth, early childhood education and the Experimental Schools program.

My success in obtaining federal assistance was used by opponents of school finance change against any proposed reform. In 1970, during the *Rodriguez* trial, attorneys for the state made much about the amount of federal funds available to the district. In my deposition for the trial, state attorneys argued that if the amount of federal funds were added to state and local funds, the district was not so far behind wealthier districts in student expenditure rates. I argued that the district made good use of the funds, but that there were severe restrictions in the grants that precluded the use of these funds to support the basic instructional program. Although a lot of money was expended in the training of school personnel, the inability of the school district to offer a competitive salary led to a continuous loss of personnel, almost as soon as they were being trained.

The entire issue of federal funds became moot when the federal district court in *Rodriguez* ruled that the availability of federal funds and funds from other sources did not vacate the state's responsibility to provide equal opportunity for all children. In its reversal of *Rodriguez*, the U.S. Supreme Court did not reverse this position taken by the lower court that federal funding for special purposes was not related to the issue of an equitable state system. Probably because of this, federal funds did not become an issue in the *Edgewood* litigation in state courts.

IMPROVEMENT AND FUTILITY

Although there was extensive improvement in educational opportunity and student performance in Edgewood during the four years that I served as superintendent, I knew that the lack of an equitable system would preclude further improvement and even erode past gains. Disparities between high and low wealth districts were increasing at an alarming rate, and it became evident that the children of Edgewood and all low wealth districts were doomed by inadequate educational opportunity into second-class citizenship unless the school finance system was drastically reformed.

Less than a month after the Supreme Court reversal of *Rodriguez,* I reluctantly submitted my resignation as superintendent of the Edgewood School District in 1973 to pursue full-time what was to become an additional 20-year quest for school finance equity.

CHAPTER 2

RODRIGUEZ v. SAN ANTONIO ISD

INTRODUCTION

As the superintendent of the Edgewood School District, I met periodically with the attorney for the school district, Gregory Luna, to review legal issues. In 1969, early in my tenure, Luna briefed me on a suit by the Edgewood Concerned Parents Association against the San Antonio, Edgewood and five other districts in Bexar County. The suit was *Rodriguez v. San Antonio Independent School District*, and it took exception to the low quality of education afforded students in the community. I mentioned to Luna that I wanted to testify in the suit as an expert witness for Demetrio Rodriguez and the other parents who were plaintiffs, but I was informed that it would be difficult since I represented the Edgewood District, one of the defendants in the case. I felt that the school district was not responsible for its deplorable financial status, and if the thrust of the suit was to consolidate some or all of the low wealth districts in Bexar County, it would create nothing but a larger low wealth district that would still receive inequitable treatment under the Texas system of school finance. In a school finance course which was part of my doctoral program at The University of Texas at Austin, I had been taught that poverty consolidated with poverty produces nothing but poverty. Applying this maxim to the Bexar County situation, I expressed reservations about the direction of the court case, and Luna responded by looking for alternatives in our district response. Raul Rivera, a local attorney with a strong background in constitutional law, was retained to provide assistance in dealing with the court case.

The result of their legal work was a shift in the direction of the case. All seven districts were dropped as defendants and were replaced by the State of Texas, and Edgewood provided extensive support in the litigation that followed. The San Antonio District was the only other district out of 1,600 in the state that similarly supported the suit.

During the next 25 years both Greg Luna and I were to be intensely involved in the *Rodriguez* litigation, first I as superintendent and he as attorney for the Edgewood district, and subsequently, I as director of the school finance reform oriented TEE / IDRA organization, and Greg Luna as a supportive state representative and state senator in the Texas Legislature.

During this entire 25-year period, I had extensive interactions with Demetrio Rodriguez who gave his name to the court case. On one occasion, Rodriguez mentioned that the case bore his name by coincidence. When the Concerned Parents Association met with their attorney, Arthur Gochman, he asked the members of the group to sign the suit filing papers. Rodriguez told me that he signed first because Gochman passed the document from left to right. If Gochman had passed the document in the opposite direction, Rodriguez would have been the last to sign. Regardless of the cause for the suit title, I am happy that Rodriguez signed first. As a result of this case, he attained considerable notoriety, and he was perfectly capable of handling it. For more than 25 years, he has been a eloquent spokesperson for school finance reform, continuously exhorting the courts, the legislature and even the advocacy organizations to continue the effort with the utmost speed so that his children, and later his grandchildren, could enjoy the benefits of equal educational opportunity.

Even during the *Rodriguez* trial and much earlier than the three-judge district court decision, I exerted an all-out effort in search of legislation, rather than litigation, in response to the financial dilemma of Edgewood and other low wealth districts. On May 25, 1970, 18 months prior to the lower court's finding in behalf of Rodriguez, I presented the following testimony before the Texas Legislative Interim Committee on State-Local Relationships in Financing the Minimum Foundation Program. In this presentation to Chairperson Sen. Aiken and the members of the committee, I described the financial plight of the district and the need for legislative action:

> Sen. Aiken, honorable members of the committee, thank you for this opportunity to present to you information which I hope will be helpful as you deliberate the course of public school finance in this state.
>
> In assuming the long-range objectives of making Texas a "national leader in educational aspiration, commitment and achievement", the 59th Legislature began the long process of correcting some of the conditions which all Texans pay for in lost financial, social, and human resources. Nowhere will the positive effects of efforts toward that objective be more welcome or more greatly needed than in the Edgewood School District in Bexar County and in other "low tax base, low income, low achievement districts."
>
> The Edgewood School District is a core city school district in Bexar County. Situated in the western section of San Antonio, it covers an area of 14 square miles and includes some 25,000 school-age children. The property in the district is mostly residential. There is an absence of industrial and little business and commercial property. Edgewood is a poor district. It reflects urban poverty, ethnic and racial imbalance, high drop-out rates, and the effects of too many uncertified teachers, inadequate physical facilities, and inadequate library facilities. In short, it is a district where acute educational needs are met with such meager resources that the effort often seems an exercise in futility.
>
> This designation of Edgewood is not mine alone. Two years ago the Governor's Committee on Public School Education told the story better in "A Tale of Two Districts," the comparison of a core city district and a suburban district in Bexar county.[M16] One district had 91 professional personnel beyond the minimum foundation program; the other had 45 less than that prescribed by the minimum foundation program. One district had 5 percent of its teachers on emergency permits; the other had 52 percent on emergency permits. One district received $221 in state aid per ADA; the other received $217 in state aid per ADA. One district had $29,650 in full property value per ADA; the other had $5,875. The deprived district in this comparison was Edgewood. I can think of no clearer indictment of the minimum foundation program as inadequate to the task of educating children than this comparison.
>
> Today I should like to present testimony which will substantiate the following:
>
> 1. that the Edgewood School District could not operate if it had to depend solely on the efficiency of the minimum foundation program.
> 2. that local effort in the Edgewood School District is comparable with that of other school districts and may well have reached a dysfunctional level in relation to the capabilities of its population, and
> 3. that the State of Texas is courting a catastrophe in its educational system as long as it remains complacent in the belief that its school districts will survive on P.L. 874 and other federal monies.
>
> I accept the responsibility for representing several alternatives for your consideration although there is one alternative that is indispensable and to which I hope this committee will commit itself: the development of a state-local formula for financing the minimum foundation program that incorporates the necessary flexibility to provide equitably for children attending school in districts that do not have the financial capability for implementing even a minimally acceptable instructional program.
>
> **EISD Tax Structure**
>
> The tax structure in the Edgewood School District reflects the community's willingness to tax itself. This willingness has little impact on the reality of the inadequate tax base in the district. A comparison of the tax base per pupil of school districts in Bexar County illustrates:

School District	*Tax Base Per Pupil*
Alamo Heights	49,214
East Central	31,692
Edgewood	5,945
Harlandale	11,543
Northeast	30,613
Northside	23,724
San Antonio	22,103
Somerset	29,070
South San Antonio	11,981
Southside	17,341
Southwest	21,344

The Edgewood tax rate of $150 per $100 valuations compares favorably with that of other school districts in the area. The average for the county is $1.48 per 100 valuation. The assessment ratio is one of the highest in the area.

With a 100 percent collection rate, local tax revenue in the Edgewood District in 1969 would amount to $257,434. If we subtract the local fund assignment of $139,696, which is the amount the Edgewood School District paid to support the minimum foundation program, this leaves $117,739 in local uncommitted resources. The real tax collection rate in the Edgewood District is just less than 80 percent and a local tax revenue of $205,946, when depleted by a local uncommitted resources.

To tax more or to collect more is, in most cases, a dysfunctional response. The average annual income for the traditionally large families in the district is $3,300. Furthermore, tax collection is made difficult not because the people in the district are uninterested in the educational system, but because land speculators living outside the district can ignore their tax payment responsibilities with confidence that the school district will not be able to prosecute. The school district cannot prosecute in most instances because of the combination of low property values and the 15 percent statutory limit on attorney fees. To illustrate we divide the $66,000,000 assessed valuation in the district by the 22,000 property items which results in an average value of property in Edgewood of $3,000. The 70 percent assessment ratio results in $2,100 taxed at $1.50 per $100 valuation or a $31.50 per collection. The statutory limit on attorney's fees of 15 percent limits the average attorney fee to $4.72 and few attorneys are willing to work for this amount.

Expenditures from Local Resources

Expenditures from local funds are high when compared with local resources; so much so that "deficit spending" seems a ludicrously mild term for describing the resulting situation. The following are some selected expenditures essential to the operation of the Edgewood School District. These figures are taken from the Edgewood Independent School District budget for 1969–70 and are auditable for their essential validity. Further, let me emphasize that these are selected items, they are not by any means a complete accounting.

SELECTED EXPENDITURES	
A. Administration	
1. Tax office	$22,608
2. Business office	24,396
payroll (computer)	4,000
B. Salaries	
1. Salary increments above MFP	183,743
C. Instructional	
1. Instructional supplies	34,509

SELECTED EXPENDITURES (continued)

D. Co-curricular activities	
1. Band	8,000
2. Choral	4,000
3. Athletic	36,000
E. Equipment	
1. Vocational education	10,000
2. Other	31,663
F. Food service	10,234
G. Insurance	
1. Fire and extended coverage	16,674
2. Vehicle liability	1,718
3. General liability	4,205
H. Maintenance payroll	485,290
I. ROTC Instructors	24,000
J. Utilities	168,282
K. Local teacher aides	12,000
TOTAL:	$1,081,322

Non-Categorical Income

In addition to the unassigned local funds of $66,250 the Edgewood School District can utilize to cover the expenses I have just itemized, the state provides an allocation per CTU (Classroom Teacher Unit) which amounts to $447,600. This results in $513,850 to cover expenses totalling $1,081,322. The deficit on the basis of these selected items is $567,471. The exact deficit is dependent upon the emergence of critical needs and the amount of risk that the administration wishes to incur. The conclusion is obvious: If the Edgewood School District had to rely solely on the efficiency of the minimum foundation program and unassigned local funds, it would be bankrupt before half of the school year was over. The school district is able to operate just short of bankruptcy for two reasons:

1. Because of the availability of P.L. 874 funds which were critically threatened by the Nixon administration this year and which will be eliminated in the very near future if President Nixon's stated philosophy on P.L. 874 is implemented, and
2. Because we have learned to do without.

Our dependency on P.L. 874 funds is crippling. We perpetuate practices that we will be unable to carry on if these funds are eliminated. For the Edgewood youngster school may soon reopen with no pep squad, no band, no R.O.T.C., no football or baseball. Edgewood students may soon be giving up locally subsidized activities such as choir, drama, debate, and yearbooks. A John F. Kennedy High School student who won all-state honors in choir this year may not be able to travel to Dallas to compete next year. Some would argue that there is already too much emphasis on co-curricular activities. I would not disagree entirely, but I challenge the critics and this committee to help me explain to a sixteen-year-old boy that he shouldn't mind that he can't play football because the low tax base in the district, the local fund assignment, and the minimum foundation program are incompatible with his dream. Yet I have to live with the reality that the athletic program costs the district approximately $36,000 per year or more than half of the district's local unassigned resources.

Edgewood's entire existence is based on doing without. Often elimination of activities is costly in terms of student achievement. Almost always it is costly in terms of the children's right to enriching experiences. The effect of the denial of these experiences, so characteristic of the American way of life, due to a lack of funds in this district is conducive to the development of the negative self-concept so characteristic of the disadvantaged and the minority groups.

Categorical Aid

The Edgewood School District received some $4.5 million in federal aid this year, all categorical with the exception of P.L. 874. The sum was unusually high this year because of the Model Cities program funded for San Antonio. Model Cities philosophy, however, insists that all programs initiated with Model Cities funds eventually phase into other kinds of funding, presumably local or state. Other federal programs such as Title I, Title I-Migrant, Title VII, and Career Opportunities are an additional burden on district resources. These programs make demands of administrative personnel in the accounting, personnel, and executive offices, yet federal guidelines governing the programs make no allowances for budgeting indirect costs and many explicitly limit allocations for indirect costs. The result is obvious—enough categorical federal grants will eventually cause a school district to go bankrupt. Title I allocations, for example, allow 5.2 percent for administrative costs to a school district. The Title VII allocation was 0 percent. The implications of these sums are readily understood when compared to indirect cost allowances awarded to other institutions. Few federal contracts awarded to commercial entities include less that 20 percent for indirect costs. Most universities concerned with the drain of financial resources for the support of institutes and research projects have enacted policies preventing the acceptance of such projects unless a minimum of 20 percent is allocated for indirect costs. In Bexar County school systems the non-categorical P.L. 874 funds again provide the assistance necessary to administer these programs.

Unmatchable Aid

Because of its lack of financial capability, the Edgewood School District yearly loses the benefits of a number of state and federal assistance programs which are awarded on the base of the school districts' matching funds. These include ESEA Title II, NDEA Titles III and V, Cafeteria Non-food Assistance, and others. Thus, a school district with the greatest need cannot avail itself of assistance because of a lack of local funds. Due to these circumstances the Edgewood School District cannot purchase an adequate amount of guidance materials and testing supplies.

The irony of the situation is heightened when you consider that the Edgewood School District cannot even avail itself of the Regional Service Center's media service, which was financed with federal funds, on the basis of the center's central concern: to develop and implement programs that will help raise the level and quality of educational attainment of youth in the region, particularly disadvantaged and handicapped youth. Edgewood's many handicapped youth cannot benefit from film and other instructional aids because the media service costs the school districts $1.00 per ADA, and Edgewood School District cannot afford the additional $23,000. per year. Carrying the irony to its ultimate conclusion, we are faced with the reality that while more affluent school district taxpayers are paying for the media service twice, first through federal taxation and then through school taxation, Edgewood taxpayers are paying for it once and getting nothing.

A parallel exists in the case of school district utilization of educational television stations such as KLRN, which charges $1.50 per ADA for its services. Again, these services are not available to the school district because it cannot afford one-half of the $30,000 required.

Physical Plant

The Edgewood community is committed to its educational system. In all of the district's history, the community has never defeated a proposed bond issue. A comparison of school districts in Bexar County shows that the Edgewood School District commits a greater portion of its tax dollars to bonded indebtedness than any other district in the county.

In spite of this commitment, physical facilities in the district are grossly inadequate because capital outlay must be provided entirely by local funds. Alleviation of these inadequacies is not likely because the school district has reached the statutory limitation on bonded indebtedness. P.L. 815 impact aid for construction was recently discontinued. What does seem likely is that the situation will deteriorate. In the first place, an unusual increase in school population can be anticipated because of Model Cities and other Department of Housing and Urban Development projects.

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COMPARATIVE DATA

	Amount of Tax Rate Expended For:	
	Instruction	*Debt Service*
Alamo Heights	1.40	.35
Harlandale	.99	.48
San Antonio	1.25	.36
South San	1.00	.46
Northeast	1.00	.50
East Central	.75	.61
Southwest	.70	.50
Northside	.80	.45
Judson	.60	.60
Southside	1.30	.59
Edgewood	.55	.95
Average for county	.95	.53

Model cities projections call for 16,000 housing units in the Edgewood District alone over the next four years. Providing an educational program for the additional children would be difficult; building the necessary physical facilities would be impossible. Secondly, the school district's heavily strained operating budget does not allow for the necessary upkeep of existing facilities.

Alternative Solutions

There are several alternatives to the rather dismal picture I have painted.

1. Decreasing the Local Fund Assignment

   One alternative is to decrease the local fund assignment. Quite frankly, even the elimination of the Edgewood District's entire local fund assignment would have such little impact that I would be opposed to any attempt to offer this as a solution. As previously stated, if dependent entirely on the minimum foundation program, the Edgewood School District would be operating at a deficit of nearly $600,000. Elimination of the entire local fund assignment would simply decrease the deficit by $139,000.
2. Consolidation

   A second alternative is consolidation of school districts. This alternative is often assessed as the panacea for school districts like Edgewood. I believe that the creation of a large city or county-wide school district may very well create a subsequent serious problem—the problem faced today in New York, Chicago, Detroit and Los Angeles. This is the phenomenon of the large school district crippled by its massiveness and unable to assess, much less respond to, the needs of the community. To accept consolidation is, in my opinion, a postponement of the problem of meeting the educational needs of the community. I do not believe it is in unreasonable to predict that a few years after consolidation, we would be in the process of decentralizing in order to respond to the unique educational needs of the community.
3. Consolidating the Tax Base

   A third alternative is consolidating the county tax base. This alternative calls for the assessment and collection of all county taxes by a central agency and their distribution to the various school districts in a county on a per capita basis. While this is an acceptable alternative in terms of more equitably meeting the needs, it should be noted that the average per pupil expenditure for the county after consolidation would still be below the national average and far short of "national leadership."

4. Increased Federal Aid

   A fourth alternative is increased federal aid. Increased federal aid would be acceptable if it incorporated the development of a stable system of non-categorical federal assistance to public schools rather than a series of "glamour" programs that promise to have all the answers one year and are eliminated as "wasteful blunders" a few years later. The inevitability of increased federal control is also a cause for concern. We already have children in our school such as those in our early childhood education program and the bilingual programs who will attend school for five years before coming into contact with a state-supported teacher.
5. Increased State Aid

   Increased state aid is an inevitable alternative if this state is to achieve national leadership. In Edgewood, increased state aid is an inevitable alternative if adequacy is to be attained. Raising the CTU allocation from $600 to $1500 and reducing the local fund assignment is not an unrealistic response to needs. To talk about Texas moving into national leadership when children in districts like Edgewood are not receiving a semblance of an adequate education is extremely unrealistic.

Summary

I feel that the testimony and illustration I have presented today substantiate my concern about the quality of education in Texas and the inequality of educational opportunity. A school district with a low tax base cannot provide a minimal educational program. Thus the minimum foundation program is not living up to its promise when enacted to guarantee to the children of the State of Texas a minimum educational program.

In spite of an unusually strong local financial effort, the residents of the Edgewood School District and others like it are unable to provide for the educational needs of their children.

Texas' desire to move into a position of national leadership in education is inconceivable as long as we continue to suck the lollipop of self-deceit in ignoring and perpetuating existing inadequacies.

This testimony and similar presentations to the Texas Urban Development Commission, the Education Committees of the House and of the Senate and other Texas agencies fell on deaf ears. Reform legislation which would alleviate the plight of students in low wealth districts was never given serious consideration prior to, or during, the *Rodriguez* trial.

THE RODRIGUEZ TRIAL

The following background for the *Rodriguez* case is provided by Dr. Daniel C. Morgan, Jr. in the TEE/IDRA 1974 publication, *School Finance Reform in Texas:*[17]

> At the very time that publication and discussion of the governor's committee report was underway, an event was receiving its genesis (with no public attention whatever), an event which was to have the greatest impact of the decade, or perhaps even the post-war era. The origin of *Rodriguez* was the spring of 1968, not 1971 as many tend to assume.
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> A group of distraught parents from the Edgewood Independent School District sought the assistance of Albert Peña, then a commissioner for Bexar County (in which both the Edgewood School District and the City of San Antonio are located.) Commissioner Peña in turn brought parents into contact with Arthur Gochman, a civil rights lawyer and former law partner of San Antonio's famous Texas liberal "Maury" Maverick. The parents voiced strong complaints against the inadequate education that was afforded their children because they resided in the very poor and heavily Mexican-American (90 percent) Edgewood School District in San Antonio. The search began for the "bad guys", but people soon became cognizant of the fact that the main cause was that Edgewood simply had no tax base per pupil. Even though the residents taxed themselves at a

much higher ad valorem tax rate than most areas of San Antonio, no money per pupil came forth; nor could it come forth. Even though they might receive approximately the same money per pupil as richer districts in San Antonio from the state's minimum foundation fund, they were capable of receiving almost nothing from local enrichment, no matter how hard they taxed themselves. If money made a difference, their children had little chance compared with those in other parts of the State of Texas.

Arthur Gochman was aware of a recent *intra*-district school decision in favor of the deprived in the famous *Hobson v. Hansen* case, and he advised these parents that they just might, as a long shot, have a similar chance to claim constitutional deprivation under the Equal Protection Clause of the Fourteenth Amendment. We shall not retell the *Rodriguez* story here. It is now quite well known and documented. As everyone knows, the plaintiffs won their suit in a decision by the three-judge federal court in San Antonio by a unanimous vote. The three-judge opinion, written by the 5th Circuit Judge Irving Goldberg ruled the Texas finance system to be unconstitutional, violating the Fourteenth Amendment. The system failed to meet the compelling state interest test and the less stringent rational basis for governmental classification under the Fourteenth Amendment. The State of Texas was given two years in which to remedy the defects.

THE IMPACT OF THE DECISION

The three-judge opinion was issued on December 23, 1971. Schools and other institutions were closed for the Christmas holidays, and since the entire litigation had been a sleeper, it was not until well into the 1972 year that reaction surfaced. The general reaction was incredulity. An unheard of court case had found the Texas system of school finance unconstitutional, and by implication and precedence, most other state systems of school finance.

In the 1974 TEE publication, *School Finance Reform in Texas,* Dr. Daniel Morgan documents the response to the three-judge decision:

> **Texas' Reaction to the 3-Judge Decision**
> The initial reaction in Texas was one of surprise bordering on shock. The decision seemed to the public to come from out of nowhere; it was almost totally unexpected.
>
> In most quarters the reaction was hostile. The Texas tradition, at least among the individuals and groups with the greatest wealth and political power, is to detest interference by the federal courts in "the way we run our schools." This sentiment was quickly articulated by the long-term "Dean of Texas Education," Sen. A. M. Aiken (co-author of the Gilmer-Aiken and its modification measure, the Hale-Aiken Bill). Aiken said, in essence, "I'm not going to participate in its modification; if those federal courts have all the answers about how we ought to run and finance our schools, then let *them* give *us* those answers." Of course this was grandstanding on Aiken's part, and he did later participate in Senate Education Committee hearings after the Supreme Court's reversal of the 3-judge decision. But the point was that such grandstanding was playing to the widespread xenophobic hostility of Texans to "outside interference" (of practically all types).
>
> Many Texans felt as they did because they relied on misleading newspaper stories that caused them to anticipate that *Rodriguez* (if sustained by the Supreme Court) would imply an end to quality education; this is because it would mean statewide uniform mediocrity as Texas leveled up for those at the bottom, leveled down for those at the top, and took away "local control."
>
> Yet, a portion of the Texas body politic reserved its judgement. Many of them did so because they were mistakenly led by the news media to believe that *Rodriguez,* if sustained, meant an end to school property taxes; or at least it meant a very major modification in property taxation. On this front there might be great sympathy because Texas, like the rest of the nation, regards the property tax as by far its worst tax. Gradually, the public came to understand that the property tax per se was not being attacked; also there were two years for compliance; that, in fact, the chance for reversal

was rather good—just about an even money bet. However, certain taxpayer interests became increasingly apprehensive, with the timber industry and large corporations (especially oil and gas) leading the pack.

The education community was more reserved in its judgement than the general public, and even more divided. But they were much less enthusiastic than the untutored observer might have anticipated. A common sentiment among education administrators was expressed by no less a person than the chairman of the State Board of Education, Ben Howell, at a state meeting of the Texas Association of School Administrators [and the National Education Finance Project held on Friday, April 20, 1972, in Austin, Texas], Howell said:

> What the Federal Court gave us on December 23 was no Christmas present; it was a bomb. In fact it was an atomic bomb!

The anxiety of these administrators, behaving more like bank or corporate executives than educators, derived from their uncertainty about the validity of approximately $2 billion worth of outstanding school bonds. Fears on this point were quickly removed by a revision in the *Rodriguez* three-judge decision. Administrators rested better, but not necessarily happily. As a group, education administrators in Texas were, and continue to be hostile to fiscal neutrality and, truth be told, to equal educational opportunity (however we define the concept). To document this assertion, recall that the State Board of Education favored appeal of the decision to the Supreme Court; their support from the ranks on this decision to appeal was rather strong. The state board then for a very long while seemed totally incapable of comprehending that it was under federal court order; it seemed able to do nothing but pin its hopes on its appeal. If one doubts this fact, he need only turn to the February 12, 1972, mimeo of the Texas State Board of Education, entitled, *Statement of Principle for the Development of a School Finance Plan.*[M18] It is a complete contradiction of the Rodriguez decision, seven weeks after it had been handed down as an order for them to comply with.

Unlike the administrators, the 150,000 member Texas State Teachers Association (TSTA) saw the decision as an opportunity, not so much to end wealth discrimination as to recoup fading political and organizational power and to increase the number of teaching positions in the state. This was a period of frightful job shortages brought about by an oversupply of teachers; at the same time pupil enrollment was quite stable. TSTA was not in a favorable position to achieve significant further gains; in fact, because of its oversupply position, many believed it to be in danger of losing even some of the absolute salary increases which had been programmed for it by the legislation of 1969 . . . Nevertheless, despite a tough economic position, TSTA members were pressuring for higher salaries. The programmed increase had appeared quite adequate in the late sixties when we were accustomed to inflation rates of 3 percent or so. But inflationary rates of 7 percent to 10 percent were certain to devour increases in reality income. So, while the habit was to refer to TSTA as "the most powerful lobby in the state legislature," the reality as seen from the inside was an organization witnessing hard times (that is, from the perspective of a professional organization—life and growth). To TSTA leadership, *Rodriguez* appeared a possible godsend (they had not expected it). That is, *Rodriguez* might produce conditions comparable to those created by the Governor's Committee Report in the legislative session of 1969. It might permit salary gains and new teaching positions in the guise of school finance reform and equalization.

Politicians' reaction to *Rodriguez* was virtually unanimous, viz., one of non-commitment and postponement. (Such reaction is not unique to Texas but is general. See M. Cohen, B. Levin, and R. Beaver, *The Political Limits to School Finance Reform.*)[M19] Commitment *before* the Supreme Court had ruled appeared foolish, and who could say how it would rule? The legislature would not meet until January 1973, so that it was clearly foolish to commit before that time. But even after the legisla-

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[M18] See Texas Education Agency, *Recommendation for Legislative Considerations on Public Education in Texas: Public School Finance Plan* (Austin, 1972).[M20]

[M19] In this regard see appraisal "School Financing Is *Good* For You," in *The Texas Observer,* December 15, 1972, pp. 1, 3.

> ture met in January, it was hard to predict what would happen. The voters had elected a new inexperienced Lt. Governor (William Hobby), a new and inexperienced Attorney General (John Hill), a new and inexperienced Speaker of the House of Representatives (Price Daniels, Jr.), as well as two of Texas history's "greenest" legislative bodies. A good part of this inexperienced was explained by the failure of many incumbents to survive voter reaction to Texas' "Sharpstown Scandal." Most elected officials did not understand the problem, much less have the ability to advance solutions to it. Perhaps even more important, both the Governor and the Lt. Governor, together with many, many legislators, had run on "no new taxes" platforms; it was widely believed that school financing reform would require heavy additional revenues for poorer districts.
>
> The State's Senate is the most critical body for new education legislation in the Texas scheme of political enactment. Its presiding officer, Lt. Gov. William Hobby, as well as Senate Education Committee Chairman, Oscar Mauzy, both privately anticipated that the Supreme Court would affirm the lower court decision. These anticipations further accelerated the strong trend toward postponement (if one can accept a little humor on so grave a matter). The Lieutenant Governor could not appear to be crossing the Governor from the moment of joint assumption of office. And Sen. Mauzy, an avowed Texas "liberal," was operating in a very conservative chamber; he hesitated to attempt to push the Senate (quite a task) without more leverage from the Supreme Court. Moreover, as most politicians saw the situation, even if one supposed affirmance by the Supreme Court, it was most unpredictable what their guidelines might be. Beyond even this, if one could predict the guidelines as well affirmance, it was nevertheless nearly impossible to guess what might be the positions taken by the various political interests groups in the state.
>
> Similar to the Senate, the House did not commit itself. From convention time in January, 1973, until the day of Supreme Court reversal—March 21, 1973—virtually nothing happened in the House, despite the continual self-counsel of "Let's get moving, there's a huge job to do!" Instead, the prevalent view was that despite Gov. Briscoe's opposition to a special session for education finance, we representatives will soon be compelled to participate in just such a session. The question was more one of when than of whether. In the House there was, of course, some awareness that numerous study groups were working on the subject, but there would be time later to learn of the results of these efforts.
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> If one asks what Gov. Dolph Briscoe was thinking concerning *Rodriguez* in the period between the three-judge decision and the Supreme Court decision (16 months), the closest answer is that he was not. It was as if he was hoping or believing that it would simply go away. A more charitable interpretation is that the governor was receiving more advice than others to the effect that reversal was likely, although such interpretation is hard to document. Nevertheless, Briscoe never veered from his resolve not to support any school finance plan that would require a tax increase during his first two years in office.

The period between the three-judge decision in *Rodriguez* (December 23, 1971) and the Supreme Court's reversal on March 21, 1973, was characterized by extensive activity, interest and optimism. It seemed that everybody wanted to know what the court decision implied. There appeared to be little concern for educational opportunity and equity; the immediate concern was what the court decision meant in terms of school finance, state costs, and state and local taxes. The media had little understanding about the school finance system and cared even less. My large number of interviews and presentations reported in newspapers, radio and TV were inevitably frustrating experiences, in that the media reporters, having little understanding of the school finance system and failing to prepare adequately, had to be briefed on the system, its shortcomings, and the issues each time the topic received coverage. In radio and TV interviews and panel shows, I usually briefed reporters minutes before my presentations. It was not unusual to prepare my presentation with an accompanying list of questions for the interviewers to ask me during the program.

There was an endless number of hearings by a variety of Texas agencies which were seeking recommendations in formulating a response to *Rodriguez*. I made numerous presentations not much different from the presentations and testimony I had presented prior to the court decision. Although there was extensive optimism on my part that the recommendations I had been making would be given much better consideration in the light of the court order, in retrospect, this did not come about. The various members of the Texas Legislature were solely interested in making trivial adjustments to the school finance system to meet the letter of the law, while perpetuating the privileged position of residents of high wealth districts.

During the interval between the original decision which found the Texas system unconstitutional and the reversal in the U.S. Supreme Court, there were consistent appeals made to me to drop the court case and to let the legislature formulate a response without pressure from the courts. One commonly heard argument was that the plaintiffs in *Rodriguez*, advocates for reform and the federal courts were attempting to make drastic social changes in too short a period of time. Such drastic changes were bound to create apprehension, stress, divisiveness and animosity and disrupt the normal social evolution. These arguments were not different from the segregationists' arguments after the 1954 U.S. Supreme Court decision in *Brown v. Board of Education*, which upset the centuries-old normal social evolution by requiring an immediate desegregation of the schools.

In 1972, immediately after I had finished testimony before a Texas legislative committee, I was asked to step outside the room by a superintendent from a high wealth school district. He started by clarifying that he was only a messenger, but he had been asked to inform me that if I could get the plaintiffs and the district to back off from the *Rodriguez* case, I would be guaranteed a long, successful and lucrative professional career in the high wealth districts of Texas. I asked if I could take the 24,000 children of Edgewood with me, and he stated that he had anticipated my position and had already informed his colleagues that this would be my response.

The second argument commonly heard during this period was that there was no opposition to reform and the establishment of an equitable system of school finance. Educators, state education agency personnel, state administrators and state legislators consistently assured me that their only opposition to *Rodriguez* was that they did not want the change rammed down their throats by the federal courts. I was given so much assurance that if Texas prevailed in the U.S. Supreme Court, they would immediately join me in the design of an alternative equitable system of school finance. These assurances were part of the reason for my leaving the public schools in 1973 to participate in the immediate design of an alternative system. I naively assumed that within a couple of years I would be back in the public schools working under vastly improved conditions under a fair and equitable system of school finance. In retrospect, I can only say that I'm grateful that nobody was opposed to the equitable system since it took 22 additional years, including 10 years of additional litigation, to achieve an only partially equitable system. If there had been real opposition, it may have taken several hundred years to get there.

THE WORK OF THE STUDY GROUPS

Regardless of Texans' unhappiness at having change crammed down their throats by the federal courts, the *Rodriguez* court order demanded that a new system of school finance be legislated, either in a special session called by the governor or during the regular 1973 session of the Texas Legislature. The state hitched up its pants and began the long process of designing a new system. Morgan documents this process in TEE's 1974 publication, *School Finance Reform in Texas.*

> Following the three-judge San Antonio decision, a dozen or so studies were launched. But among those with strong political power only three had a chance to receive serious public evaluation, the plans of: (1) the State Board of Education, (2) the Texas State Teachers Association, and (3) the consulting firm of Peat, Marwick, Mitchell & Co. (for the State Senate).
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> **The State Board's Recommendations**
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> On Columbus Day, 1972, 10 months after the *Rodriguez-San Antonio* decision which had placed them under federal court order, the members of the State Board of Education unveiled their school financing proposals, recommending them to the executive and legislative branches of government.[M18]

[M18] See Texas Education Agency, *Recommendation for Legislative Considerations on Public Education in Texas: Public School Finance Plan* (Austin, 1972).[M20]

Their recommendations completely ignored the no wealth discrimination principle of *Rodriguez*. They left intact the immense disparities in property wealth in the way of "equalizing up" or "leveling up" of the poorest districts.[M19] However, surprisingly, just three months later, on February 10, 1973, the state board recanted considerably, responding to the urging of some members of their staff and study group.

They recommended the following:[M20]

1. Slight increases in staffing formulas under the existing foundation school program (FSP).
2. Allotment increases under the FSP for maintenance and operation which would average up to $120 per pupil, as compared with the existing $30 per pupil.
3. An incremental $100 per pupil in poor districts receiving Title I funds.
4. Use of market values of property (rather than the existing Economic Index) in computing local shares under the FSP.
5. "The level of tax enrichment funds available to school districts should be expanded to a maximum of $300 per ADA, except that those districts currently providing more local funds may remain at current levels:
   a. For up to the first $100 per ADA of such revenue, the district would levy the equivalent of a tax rate not to exceed $0.10 per $100 of the market value of taxable property in the district. Guaranteed state aid would be supplied to those districts unable to raise $100 per ADA by the application of such a rate.
   b. For up to the second $200 per ADA of such revenue, the district would levy the equivalent of a tax rate not to exceed $0.30 per $100 of the market value of a taxable property in the district. Guaranteed state aid would be supplied to those districts unable to raise $200 per ADA by the application of such a rate.
   c. Districts with high concentrations of local wealth would fund up to the entire $300 per ADA from local funds at a reduced tax rate."[M21]

This recantation was an immense improvement, but it did have its problems. The key improvement was the recommendation that for local enrichment beyond the foundation school program there could be a maximum of $300 per pupil, with the state guaranteeing that amount to any district taxing itself at the required tax rate. This was a limited form of district power equalization.[M22] Districts enriching beyond $300 at the present time were permitted to maintain their current level of funding, but were not permitted to enrich further. In other words, the affluent districts were to be frozen into their existing levels of expenditure, and over time the state government would raise the effective minimum in all other districts willing to meet the minimum tax obligation. *Eventually* equalization or at least a *limited* (not full) form of district power equalization would prevail. But, this phase of the plan was widely regarded as "impractical" (actually meaning incapable of legislative passage given the political power of the wealthy districts) and it was dropped almost immediately after presentation to the legislature. The incremental cost of the entire state board's "recantation plan" was quite moderate—almost negligible in its early years, and remaining moderate even in later years. The goals of the plan would thus be slow in coming to fruition. Many persons today believe that in today's political climate (with Dolph Briscoe as governor, etc.) something close to this plan will prevail legislatively (as in the Legislative session in 1975).

[M19] In this regard see appraisal "School Financing Is *Good* For You," in *The Texas Observer*, December 15, 1972, pp. 1, 3.

[M20] Texas Education Agency, *A Special Supplement to Recommendations for Legislative Consideration on Public Education in Texas: Public School Finance Plan* (Austin, 1973).[M22]

[M21] *Ibid.*, p. 11.

[M22] It was only limited and not full power equalization for two reasons: (1) Should a district supplement by more than $300 per pupil it was wholly dependent on its wealth (which continued to differ immensely among the 1,149 districts, of course); and (2) Should a district tax at the minimum required rate and raise more than $300 per pupil thereby, it was *not* required to pay over the surplus to the state government. (Without such state recapture, a plan cannot be fully power equalizing.)

The Texas State Teachers Association Recommendations

TSTA followed the log-rolling principle of providing something for everyone. But it provided something for the taxpayers also, viz., an extra tax bill of a billion dollars or so, a rather incredible tax increase given the political climate of opinion in Texas in 1972–73.

The stress of the Texas State Teachers Association proposals in terms of program cost was just where one might have expected, on job creation and salary implementation.[M23] TSTA proposed lower pupil-teacher ratios, additional special duty teachers, more jobs for supervisors, counselors and principals, plus an acceleration of the scheduled kindergarten program. Only a small percentage of total costs would go toward equalization of pupil expenditures among school districts. There was no program at all for power equalization atop the proposed new foundation program. Thus, while TSTA appeared to have something for everyone, there was really very little for the plaintiffs in the *Rodriguez* suit and children living in poor districts.[M24]

The Peat, Marwick, Mitchell Study

The Peat, Marwick, Mitchell & Co. Study[M25] was prepared for the Joint Interim Senate Committee to Study School Finance. This committee was a merger of three Senate interim committees appointed by the former Lt. Gov. Ben Barnes.[M26] One reason for calling it "The Peat, Marwick, Mitchell Study" is that this consulting firm staffed it; but a more important reason for so referring to it, is that virtually no one else wishes to claim responsibility for it. This is not necessarily to denigrate it, however. To illustrate, the study paid close attention to the no wealth discrimination concept of *Rodriguez* and tried to formulate a satisfactory response to the lower court's ruling, should it be affirmed. And virtually no politician or governmental body seemed to want to be tainted politically by such results, at least not *before* the Supreme Court had ruled—and then not after it had ruled, given the way it ruled.

The Peat, Marwick report was not formally delivered until March 20, 1973, but most of the committee's ideas were out by December, 1972. It presented 12 recommended potential combination schemes, derived from three revenue plans recommended and four distributional approaches. Its preferred ("suggested") plan placed a severe limit on local enrichment, although it did not advocate thorough power equalization (of any sort) atop the proposed new foundation program. It recommended increased support levels for most districts with minimum as well as maximum local rates of property taxation. Significantly, the "suggested" plan provided that local districts could spend their state funds as they pleased; they were not locked into the inflexible categorical grant system supported by TSTA.[M27] By no means did Peat, Marwick recommend reducing or eliminating local property taxation; in fact, it recommended an increase in the local share of the state's program from the present 20 percent to a new 40 percent, which in Texas almost surely implied an overall increase in total ad valorem local property taxes.

[M23] "School Financing is Good For You," *Texas Observer*, op. cit., pp. 1,4.[M21]

[M24] Documented in address by Daniel Morgan, "Rodriguez and Its Aftermath," Trinity University, San Antonio, November 30, 1972 (available in mimeograph form).[M23]

[M25] See Report of the Joint Senate Interim Committee, Public School Finance (Austin: State of Texas, 1973).[M24]

[M26] The committees were the Senate Interim Committee to Study Urban Education, the Senate Interim Committee on Occupational Education, and the Senate Interim Committee to Study Tax Revenue to Fund Rising Costs of Education.

[M27] The current foundation school program in Texas requires a district to hire specified personnel in order to qualify for its minimum entitlement. The Texas Education Code reads in chapter 16 (Sec. 16.11(c) (1969): "No district will be required to employ professional personnel for the full number of professional units for which it is eligible, but where a fewer number are employed grants shall be based upon the number actually employed during the current year . . ."[25] In other words, if particular personnel are unavailable, or if a district is unable to afford to supplement a professional's salary (if the market so requires in its existing state), or if the district cannot afford the necessary physical facilities for particular personnel, or if the district prefers some other category of educational expenditure, the district loses its foundation entitlement.

THE REVERSAL OF RODRIGUEZ

If December 23, 1971, was a happy day for the Edgewood School District, March 21, 1973, was certainly an unhappy day. The U.S. Supreme Court reversed the favorable finding by the lower court on a 5-4 vote, declaring that the system was unfair, but that education was not a fundamental right guaranteed by the federal constitution.

Morgan describes the reversal and its aftermath in this continuation of TEE's *School Finance Reform in Texas:*

> On October 12, 1972, the Supreme Court heard the oral arguments in *Rodriguez,* with Charles Alan Wright representing the appellants and Arthur Gochman representing the Appellees (the initial plaintiffs). On March 21, 1973, its decision of reversal on a 5-4 vote was handed down. There is no need here in reviewing the arguments, either oral or by brief. Such reviews and arguments are readily available to any interested reader.
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> With the reversal, it was inevitable that no genuine variant of fiscal neutrality or "no wealth discrimination" would be adopted by the Texas Legislature in 1973 (or ever, no doubt). Gov. Briscoe continued to insist that there was not time enough in the existing session for the requisite study. He also argued that property tax study and reform must precede any real school finance reform, or at least accompany it. Most of his argument was a ruse; what he meant was that he wanted no major increase in taxes during his first two years of office. While the Texas governor is weak, he nevertheless holds veto power (and more), and he calls the special legislative sessions. Thus despite many efforts to force him, Briscoe's adamancy prevailed. So it also appeared to follow that there would be no genuine effort at reform legislation before the next biennial legislative session, commencing in January of 1975.
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> Amazingly, however, the leadership of the House of Representatives opted to push a form of compromise reform during the current legislative session. Such behavior puzzled the seasoned political observers because ultimate defeat of such effort was a virtual certainty: anything passed by the House faced the conservative Senate, a Lt. Gov. not anxious to buck the incumbent governor, plus the opposition and veto power of the Governor. But it appeared that there were sufficient votes for some kind of reform compromise in the House. Perhaps pressure might be applied to the Senate and Governor? Developments in the 1973 Legislature might provide more encouragement to reformers than the seasoned observers would have expected after the high court's reversal, given the distribution of political power in Texas.
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> The Texas tradition regarding elementary and secondary education finance has been one of apathy bordering on non-cognizance. Before *Rodriguez,* only a handful of people in the entire state had understood the finance system, which is admittedly the most complex in the entire nation. Almost never has the Texas public been jolted from its lethargy. But because of the publicity surrounding *Rodriguez,* the level of consciousness of the body politic has been raised appreciably; even in the legislative session of 1973 there was a general awareness, at long last, of the financing system's severe deficiencies. Prominent politicians, from the governor and lieutenant governor downward, had affirmed publicly the necessity of reform, whatever the Supreme Court might rule. Large numbers of people seemed now to expect, perhaps desire, reform; at least the numbers seemed larger than this paper's analysis to this point might lead the reader to expect.

THE POWELL CHALLENGE

Immediately following the U.S. Supreme Court reversal in *Rodriguez,* there was a meeting of advocates for school finance reform. Our first initiative was a dissection of the Powell decision and an attempt to determine what had gone wrong. The meeting was attended by attorneys, plaintiffs, intervenors, political leaders, educators, and expert consultants. There was an extensive amount of Monday-morning quarterbacking as we reviewed the Supreme Court findings. Arthur Gochman, lead attorney for the plaintiffs in the case, consoled himself with the thought that the entire *Rodriguez* experience had been a victory, since three judges in the lower court and four in the Supreme Court had found in favor of the plaintiffs, for an overall score of 7 to 5.

Attorneys for the Mexican American Legal Defense and Educational Fund (MALDEF) postulated that the entire effort had been lost by the failure to make the case a minority civil rights issue. Questions raised by Justice William Douglas during the high court hearings were interpreted as a plea to change the suspect class from "the poor," which had not been accepted by the five prevailing justices, to "Mexican Americans," which had long been accepted as a suspect class by the courts.

I believe that the reasons for failure were moot. Civil rights attorneys pointed out that the Powell decision indicated that the five prevailing fundamentalist Supreme Court justices had made up their minds to reverse the decision and then spent considerable time in an attempt to provide a legal basis for their action. I readily agree with them and conclude that the primary reason for the loss of the case was timing. If the case had been heard by the Warren court, there is no question but that we would have easily won the case. By the time the Supreme Court heard the case, the majority of the justices were conservative Republican appointees, believing that the Warren court had opened up a Pandora's box with liberal decisions, such as the *Brown v. Board of Education* school desegregation decision, that were causing a large amount of social unrest. I see the reversal of *Rodriguez* as a political decision to ease up on the social leadership being provided by the judicial branch of government in favor of the administrative leadership that Pres. Richard Nixon was supposed to provide.

The Powell decision concludes with the following:

> . . . We hardly need add that this court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods and its funding, is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued attention of the scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.

Advocates of school finance reform had only one more question following the reversal. Do we now file suit in the Texas courts? Without exception, each of the legal experts at the meeting expressed serious doubts that the present Texas Supreme Court would step in where the federal court had feared to tread.

We finally and reluctantly agreed that the solution would have to come from the lawmakers and from the democratic pressures of those who elect them. Texans for Educational Excellence (TEE) accepted the Powell challenge and proceeded to formulate the ultimate solution for legislative consideration, and if unsuccessful in the legislature, for the Texas courts.

CHAPTER 3

POST-*RODRIGUEZ* (1973–1975)

TEE/IDRA

On Tuesday, November 21, 1972, a group of interested citizens met at the Menger Hotel in San Antonio to formalize an organization dedicated to the development of an equitable system of school finance for the State of Texas. In attendance at this meeting were Lanny Sinkin, executive director of the Urban Coalition of Metropolitan San Antonio and interim director of this group; José A. Cárdenas, superintendent of the Edgewood Independent School District; Bambi Cardenas, consultant for the district; Victoria Carr and Rosemary Catacalos, advocates of educational equity; Dr. Earl Lewis from Trinity University; Jan Coggeshall from Galveston and very active in the League of Women Voters; Manuel de la Rosa, head of the El Paso Urban Coalition; Jesse Treviño, insurance executive and school board member from McAllen and Dr. Denzer Burke from Texarkana.

Prior to this meeting, various persons from San Antonio had formed an informal organization named Texans for Educational Excellence (TEE) to discuss the implications of the recent decision by a federal three-judge panel that had unanimously found the Texas system of school finance unconstitutional. In addition to the persons from San Antonio present at the November 21 meeting, other San Antonio participants in TEE included state Sen. Joe Bernal and banker William Sinkin.

The November 21 meeting began with a discussion of recent reports of the State Board of Education Committee on Public School Finance, the Texas Research League and the Education Committee of the Texas Senate. There was extensive consensus at the meeting that none of the three reports provided an adequate response to the *Rodriguez* federal court order which had declared the Texas system of school finance unconstitutional, and that Texans for Educational Excellence should provide state leadership in the formulation of a comprehensive and equitable system of school finance.

In addressing the participants, José A. Cárdenas presented three assumptions that would justify the need for this organization: (1) The *Rodriguez* decision could very well be reversed by the United States Supreme Court and would require an advocacy organization to promote school finance equity; (2) Whether under a court mandate or on a voluntary basis, the established agencies would not make an adequate response to the issue, and (3) the Texas Legislature would tend to respond to the interests of lobbying groups rather than the personal inclinations of individual legislators.

On the basis of these assumptions, Cárdenas proposed that TEE (1) act as a coordinating agency for organizations interested in school finance reform, such as the League of Women Voters, the Panel of American Women, NAACP, LULAC, American G.I. Forum and other community based organizations, (2) be a voice for groups with limited access to the normal channels of education communication, and (3) serve as a research organization conducting four activities: school finance research, developing alternatives for model legislation, analyzing proposed legislation, and disseminating information to organizations, institutions and individuals interested in school finance reform.

The meeting resulted in the planning of a statewide conference for December 1, 1972, on school finance reform to begin the process of identifying key issues and building a state-wide network of concerned and informed citizens. Lanny Sinkin ended the meeting with the following summary: "The task is great, the resources limited and the time short, but [the participants] were hopeful that the impact of TEE would be significant."

Texans for Educational Excellence began its organizational activities with a budget of $22,500: $16,500 from the National Urban Coalition School Finance Reform Project, $4,000 from the Urban Coalition of Metropolitan San Antonio and $2,000 from the Catholic Archdiocese of San Antonio.

TEE continued as an informal organization until 1973. On April 1, 1973, immediately following the reversal of *Rodriguez* in the U.S. Supreme Court, Dr. José A. Cárdenas resigned as superintendent of the Edgewood Independent School district and became full-time executive director of TEE. As proof that the move was not an April Fool's joke, the following day, TEE was notified of a $95,000 grant from the National Urban Coalition acting as fiscal agent for the Carnegie Corporation of New York and the Ford Foundation.

On May 18, 1973, Texans for Educational Excellence was chartered as a non-profit corporation by the State of Texas. The incorporators were: Lanny Sinkin, Joe Bernal, Earl Lewis and José A. Cárdenas. The original board of directors was comprised of William R. Sinkin, chairperson, chairman of the Board of the Texas State Bank and president of the Urban Coalition of Metropolitan San Antonio; State Sen. Joe Bernal; Dr. Blandina Cardenas, education consultant; Leonel J. Castillo, Controller for the City of Houston; Mrs. Jan Coggeshall, League of Women Voters, Galveston, Texas; Manuel de la Rosa, executive director of the El Paso Urban Coalition; Gonzalo Garza. superintendent of Area V of the Houston Independent School District and chairperson of the Texas Association of Mexican American Educators; Kathlyn Gilliam, community leader from Dallas; Reverend William Lawson, Houston, Texas; Mr. Lanny Sinkin, executive director, Urban Coalition of Metropolitan San Antonio; Corbin L. Snow, Jr., attorney at law, San Antonio, Texas; and Jesse Treviño, president, Treviño Insurance Company, McAllen, Texas.

William Sinkin and Jesse Treviño are still on the board of IDRA, the organization created by the reincorporation of TEE, each having served for more than 23 consecutive years.

On August 31, 1974, TEE became semi-inoperative. The organization outgrew itself in terms of a narrow base of operations which focused primarily on inequities in the system of school finance. It outgrew itself in the amounts and types of funds necessary for its continuation and it outgrew itself in its geographic sphere of influence. We anticipated, and rightly so, that it would be difficult for a group labeled "Texans" to market a bilingual early childhood curriculum in Seattle, formulate a minority education program for the Chicago public schools or to implement a dropout prevention program in Los Angeles.

On September 1, 1974, Texans for Educational Excellence was reorganized as the Intercultural Development Research Association (IDRA) with a wider scope. The original commitment to finance equity was supplemented with a broader commitment to all aspects of improvement of educational opportunity for all students.

Nine of the original 12 members of the TEE board served on the original board of IDRA. Manuel de la Rosa was replaced by Olga A. Estrada from El Paso, the Reverend William Lawson was replaced by Mrs. Debbie Haley from Houston and Corbin Snow was replaced by Judge Mike Hernandez of San Antonio. Fernando Piñon from Laredo and Dr. Denzer Burke from Texarkana were added to the board.

A listing of the current members of the IDRA board is found at the end of this publication.

FUNDING AND ORGANIZATION

As stated previously, Texans for Educational Excellence (TEE) started as an informal organization addressing the educational needs of children. Most of the leadership was provided by William "Bill" Sinkin, a local banker and businessman, who was chairperson of the San Antonio Urban Coalition. Lanny Sinkin, director of the coalition, and Rosemary Catacalos, a poet and community activist, did most of the organizational work on a voluntary basis. As the group focused on school finance reform, I became a part of the group, along with Dr. Earl Lewis, State Sen. Joe Bernal and other persons interested in the reform.

Bill and Lanny Sinkin's affiliation with the National Urban Coalition put them in contact with Bob Bothwell, who was organizing a nation-wide effort at school finance reform. Bothwell came to San Antonio and met with us, pledging temporary funding for TEE or a similar entity if we would formally incorporate into an organization with a full-time staff to address the issue of school finance reform in Texas. Bob met with me on several occasions and asked me to consider resigning from the Edgewood District to assume the position of executive director of TEE. I did not give the offer much thought, having already worked in the public schools for 22 years and having attained the rank of superintendent of one of the 15 largest school districts of the 1,600 districts in the state, albeit the poorest one.

Bothwell's support came from James Kelly of the Ford Foundation and Frederick "Fritz" Mosher of the Carnegie Corporation of New York. The plaintiffs in *Rodriguez* had approached Kelly for foundation funds in support of the court suit. Kelly had little hopes for a federal court victory and turned them down. When the case was won in the three-judge trial, he regretted his previous decision and was very interested in providing support for the formulation of a satisfactory equitable response. Over the years, various persons have been informally nominated for the title "Father of School Finance Reform in the United States." Jim Kelly is probably the most appropriate person on whom to confer this title, but without a doubt he would be a sure-fire winner for the title "Daddy Warbucks of School Finance Reform."

Kelly's only reservation about the Texas grant was that the person leading a Ford Foundation funded effort must have the necessary leadership skills, knowledge and commitment to enhance the chances of success. At some point in his deliberations with Bothwell, it was understood that the funds for the Texas reform effort would be forthcoming from Ford if I would be willing to lead the effort.

For many months I refused to consider heading the proposed organization, and it was not until the reversal of *Rodriguez* in the U.S. Supreme Court that the position became tempting. The many pledges received that the state would come up with an equitable system without the *Rodriguez* litigation started to seem hollow even prior to the reversal. If Texas would not develop an equitable system with the ax of the federal courts hanging over the state, it was improbable that the legislature would do so once the threat was removed. On the other hand, it was equally inconceivable that low wealth districts in the Texas educational system would ever be able to afford more than a semblance of quality education without the necessary state financial resources. For these reasons, within two weeks of the reversal by the Supreme Court, I submitted my resignation to the Edgewood School District and took early leave to start the TEE effort.

When I was appointed executive director on April 1, 1973, TEE had a balance of $6,545.95. On the following day, notification was received from the National Urban Coalition of a one-year grant for $95,000. During my superintendency in Edgewood, I was also regional director of the National Education Task Force de la Raza which had received a training grant for the improvement of educational opportunities for Mexican Americans. Edgewood received a sub-contract of approximately $45,000 per year in support of the regional office. With my move to TEE, the sub-contract was transferred to TEE, bringing TEE resources for 1973–74 to $191,545.

TEE PLAN OF ACTION

Since its inception, TEE/IDRA has conducted activities in four areas: research and evaluation, materials development, training and technical assistance and dissemination. Training and technical assistance was not fully implemented until the third year of operation, but the other three components were initiated immediately upon incorporation. The following article from the first *Newsletter* published in May 1973 describes the TEE plan of action:

> TEE plans the development and implementation during the next year of a program consisting of three major activities: research, development of information and dissemination of information.
>
> *Research* In the area of research, the most critical need has been a design which isolates wealth discriminating factors so that any plan could be tested to measure its compliance with the goal of "fiscal neutrality." Such a research design has been developed at the University of Texas, Austin, by Robert W. Gilmer, doctoral candidate of economics and research consultant to TEE.
>
> This framework of "non-wealth discrimination" analysis can: (1) discern which state grant-in-aid schemes are truly equivalent, (2) forecast the most probable responses of school districts to "power equalization" schemes, and (3) give a common measure of wealth discrimination for all finance schemes. Further, the design can make significant advances over existing studies in: (1) analyzing the financial consequences of a wide variety of alternative units of need, and (2) studying the different aspects of alternative measures of economic capacity and tax efforts of districts.

Needless to say, this design is a research contribution of major national significance which could well be utilized in other states that might seek fiscal reform of their public school systems. And its implementation in Texas will finally provide a concrete and impartial means of measuring any proposed plan.

In addition, TEE will accumulate and submit to comparative testing, using the aforementioned research design and detailed information regarding: (1) the present Texas system and the present systems of other states, (2) alternative plans being developed in other states, and (3) theories of school finance.

Dr. [Daniel C.] Morgan [of the University of Texas, Austin] is already working closely with the TEE staff to begin implementation of the research design, and preliminary arrangements have been made for the utilization of computer facilities with the University of Texas, Austin and Trinity University in San Antonio.

Development Using as a basis data acquired in the research activity, TEE will develop thorough, accurate and understandable informational materials for dissemination to citizens throughout the state.

Pending TEE's own research results, staff is presently using available research data to develop a series of accurate and understandable informational materials about how the present system works and exactly where and how inequities occur.

The information will be packaged into a regular citizens newsletter, brochures, booklets, etc., utilizing good graphic techniques whenever possible. Audio-visual materials also will be developed.

Dissemination In the area of dissemination, TEE will undertake a series of seminars around the state to provide media personnel with in-depth information on public school finance. In sessions that should prove helpful to the media and, by proxy, their audiences, TEE staff will attempt to translate the technical complexities of school finance into personal, human terms. TEE will also regularly supply the media with prepared press releases, etc., to facilitate their work of dissemination.

In addition to a concerted effort to provide the public with accurate information through existing news media, TEE will organize and utilize an extensive information network of concerned citizens and organizations throughout the state who will routinely receive TEE materials. As was stated earlier, an extensive mailing list has been compiled and continues to expand.

TEE will also use this network to assist interested citizens and/or groups in the convening of community level school conferences, will convene its own area and statewide conferences, and will make presentations at other groups, conferences and meetings.

Every locality in Texas has civic, vocational, professional, student or civil rights groups that can assist in this grass-roots information network. Exchange of information is already underway with several such groups.

The establishment of TEE as a full-time school finance research and information mechanism gives all the citizens of Texas an opportunity to arm themselves with the informational tools they will need to press for an equitable system of financing for their children's education.

THE RESEARCH AGENDA

The research agenda described in the TEE *Newsletter* above was implemented immediately after incorporation in 1973. Although the type of information needed to conduct research during the early years of TEE/IDRA is readily available and easily obtainable from a variety of sources in the 1990s, such was not the case then. As described in Chapter 1, freedom-of-information and right-to-know legislation did not exist, and raw data supplied at the discretion of state agencies could not be easily analyzed and interpreted before the general availability of high capacity, low cost and easy to operate computers which we now take for granted.

During the first nine months of operation in 1973, TEE had conducted and reported a large number of studies on topics not commonly known to educators, state administrators and legislators, let alone the media and the general public.

Robert Brischetto from the Worden School of Social Work at Our Lady of the Lake University and subsequently with Trinity University was hired on a part-time basis as research director of TEE. Brischetto and I served as TEE's researchers. We were given ample assistance and services by various experts in both research methodology and school finance.

The second issue of the TEE *Newsletter*, published and distributed in June 1973, provided the readers with an astonishing comparison of per pupil expenditures compiled from state data for the 1970–71 school year.[26] The table presents groups of very high and very low wealth districts and provides per pupil expenditures extremes above and below the $704 average of the state. The Libscomb District led the state with an expenditure of $7,332 per student, immediately followed by Provident City District with a similarly high expenditure of $7,303, followed by eight other high expending school districts. Below the $704 state average is Edgewood with an annual expenditure of $418 per pupil and eight others with lower levels of expenditures. The Myrtle Springs District in Van Zandt County had the dubious distinction of having the lowest per pupil expenditure in Texas at the time, $328.

The third issue of the TEE *Newsletter* in 1973,[27] featured a study of the Weighted Pupil Plan instituted in Florida which assigned weights to the various categories of students outside of the special education classifications to provide adequate funding through the foundation program in keeping with the educational needs of the student. Over the years, we met on numerous occasions with the architects of the Florida Weighted Pupil Plan and eventually, at our insistence, it became a part of the Texas system.

Other studies conducted and reported in 1973 dealt with a variety of research topics, including the inverse correlation between level of property taxes paid and the amount of urban blight, and an extensive study of nationwide trends and amount of state funding for school facilities.

In September 1973, TEE published the rankings of all of the states in expenditures for education.[28] It was noted that Texas ranked 40th among the 50 states and expended $778 per pupil per year, less than half of the amount of the leading state of New York ($1,584). These rankings were released annually by the National Center for Educational Statistics and the National Education Association, and they were consistently reported in our TEE/IDRA newsletters. Since its inception, TEE/IDRA has maintained that state and local funds are not distributed equitably in Texas, but we have also maintained that the total level of funding has been low and inadequate.

During its first year in existence, TEE also conducted studies on the flaws in the Texas system of school finance, the identification of local enrichment as the main flaw in the system and a study of property tax wealth variance in the state. The December 1973 issue of the *Newsletter* provided the readers with a listing of what we then called "The Texas Millionaires," 21 school districts with market values of taxable property in excess of $1 million per pupil, compared with a state average of $52,600.[29] On a per pupil basis, Provident City School District in Wharton County had the highest market value with $10,862,838 per pupil, an enrollment of three students and a tax rate of $0.051 per $100 valuation.

The 1973 research agenda included a listing of eight additional studies in progress at the end of the year which formed the research agenda for the beginning of 1974. These studies are described in the February 1974 issue of the TEE *Newsletter:*[30]

> TEE researchers are well into their respective studies on various aspects of school finance reform. The majority of the studies will be completed by May 31, 1974. As soon as research studies are completed, they will be available for public dissemination. The TEE *Newsletter* will keep its readers informed of the progress of the projects. Below are listed the current TEE studies underway.
>
> 1. *Quality of Education Indicators for Texas School Districts*
>
>   The research project will establish an operational conceptual framework to develop, among other things, indices to rank school districts on a quality of educational services continuum. The first task is to present valid arguments for the acceptance of quality indicators.
>
>   The indicators will then be correlated with percent minority enrollment and average family income of school district residents. The first empirical question tested is

to determine if, and to what degree, a relationship exists between a high percent of minority membership and poor educational quality [an assumption not accepted by the Supreme Court in *Rodriguez*].

Major variables within the indices will include: number of services offered, completion/dropout data, analysis of teacher characteristics (education, salary, experience, type of training, teacher-student ratio), and expenditures of different types.

2. *An Analysis of Educational Resources Available to Anglo and Mexican American Students in Texas School Districts.*

   This study compares the per pupil expenditures and various types of school district expenditures and services available to Mexican American versus Anglo pupils in Texas public school systems.

3. *An Analysis of Education Resources Available to Anglo and Black Students in the Texas School Districts*

   This research investigates the relationship between the quality of educational services received (as measured by revenues, expenditures, and personnel characteristics of school districts) and pupils' race.

4. *An Analysis of the Education Resources Available to Persons of Different Income Levels in Texas School Districts*

   This research relates data on educational revenues, expenditures, educational services, and school personnel to average income of district residents. The variables on quality of educational services are taken form state education agency measures on Texas school districts.

   The income level of district residents is provided by the School District Fourth Count Census Tapes compiled by the National Center for Educational Statistics and the U. S. Bureau of the Census. Income data are available on the total population of the district residents and on the Hispanic, Black, and Anglo groups within the district.

5. *An Analysis of Differences in the Degree of Variation Among Various School Districts Economic Indicators.*

   This research will investigate the existing degree of inequality among school districts in Texas as reflected on different indicators of district wealth, housing values, and income of residents. The indicators to be compared include assessed valuation of taxable property and family income of district residents, as provided by the Fourth Count of the U.S. Census.

6. *An Analysis of the Relationship Between School District Wealth, the Income Level, and Ethnicity of School District Residents in Texas.*

   This study will attempt to test empirically the assertion made by Justice Powell in the *Rodriguez* decision that poor children do not live in poor districts. This will be accomplished by relating estimates of market value provided by the Texas Education Agency to the income level of district residents as reported in the School District Fourth Count Census Tape.

   Analyses will also be conducted on the relationship between district revenues from local sources and the income level and ethnicity of district residents.

7. *A Study of the Cost and Impact of Conventional Models of School Finance in Texas.*

   This study investigates the cost, benefits, and tax effort associated with various conventional models for school finance equalization. The models considered are District Power Equalizing, Full State Assumption, Foundation Program, and combinations of these. Careful consideration is given to who benefits and who pays taxes under the various plans. The research also considers what districts would pay or receive under the various plans for financing education in Texas.

8. *Estimates of the Cost of Education Versus the Cost of Not Educating in Texas*

   As part of the effort to find new methods of funding public education in the State

> of Texas, an attempt will be made to show what the costs of non-education are to the taxpayers of the state. This project will include such variables as maintaining state hospitals, out-patient psychiatric clinics, correctional institutions, parole and probation programs, drug and alcohol education and rehabilitation programs, and public re-education and retraining programs, etc.

The eighth agenda item was not completed by May 1973. Although it was deemed important and was considered a priority item by Lanny Sinkin and other board members, the data resources were simply not available at the time. In 1986, under a contract with the Texas Department of Community Affairs and the Texas Education Agency, the study was finally completed. Using a methodology pioneered by Dr. Henry Levin at Stanford, the study showed that in terms of social services, lost income and tax revenue, it cost the State of Texas nine times more to not educate a person than the cost of a student's education from kindergarten through college graduation.

The research studies cited above were conducted by TEE staff with significant contributions by college students from the Urban Studies Program directed by Dr. Earl Lewis at Trinity University and students from the Our Lady of the Lake University's Southwest Schools Study Project directed by Robert Brischetto. By March 1974, with the use of TEE funds, the following six additional research projects had been initiated in cooperation with the two universities:

- "The Myth of Local Control in the Texas Educational System" by Althea Ketchum. This conceptual paper reports on the result of a search of the law and other related literature dealing with local control in the Texas educational system. Local control is discussed in terms of two aspects: local fiscal control and local decision making. A brief comparison of the effects of the foundation school program, district power equalizing and full state assumption on local control is given. The position demonstrated is that local control in Texas is so well restricted by law that it reduces largely to a function of wealth. This finding provided a research-based rebuttal to the often voiced opposition to school financial equity on the basis of loss of local control. For the next 20 years TEE/IDRA would be arguing that the financial inadequacies of low wealth districts provided few local options, and therefore no local control.
- "District Wealth and Personal Wealth: A Re-examination of the Concept of Suspect Classification in Texas" by Robert Brischetto. This study was in response to the U.S. Supreme Court statement in its reversal of *Rodriguez* that "the poor" was too amorphous a classification to merit suspect class in litigation. The Supreme Court had been impressed with a study conducted at Yale University which questioned the assumption that low wealth districts were populated by low wealth families. Brischetto proved conclusively that a high correlation existed in Texas between low district wealth and low personal wealth, i.e., low wealth districts have a high number of poor people. In addition to this relationship between poverty and low district wealth, Brischetto similarly documented a high negative correlation between the number and percentage of minority students and the wealth of Texas school districts. (for a report of findings, see *TEE File Supplement #3.*)[31]
- "School Drop-Out Rates in Texas" by Mark Graham. This study is illustrative of the difficulty of conducting research in the absence of an appropriate data base. The alarming dropout rates for minority and economically disadvantaged students would not be documented adequately until IDRA's 1986 study, *The Texas School Dropout Survey Project*, conducted under contract with the Texas Department of Community Affairs.
- "A Descriptive Study of Small School Districts in Texas" by Ann Karbach. This study focused on the extensive number of very small school districts and their impact on the financing of schools.
- "The Educational Characteristics of Texas Senatorial Districts" by Reynaldo Lopez. School wealth disparities in Texas were analyzed and compared by senatorial districts.
- "The Cost and Impact of Different Models of School Finance in Texas" by Daniel C. Morgan, Jr. The various models for school finance reform were analyzed for state and local cost as well as the extent to which each model reduced wealth disparities.

In March 1975, TEE reported seven research projects in progress and at varying stages of completion. The seven research projects were:

1. *New School Finance Suits for Texas:* The collection of data necessary for future litigation on denial of equality of educational opportunity
2. *Wealth Disparities Study:* Disparities in district wealth by demographic characteristics of school district residence, and disparities in educational input by district wealth
3. *Tax Disparities Study:* Disparities in effective tax rates by demographic and fiscal characteristics of school districts
4. *Teacher Salaries Study:* Variations in teacher salary by demographic and fiscal characteristics of school districts
5. *Simulations of Educational Finance Plans:* The impact of various school finance proposals on subgroups of pupils and districts in Texas, with a comparison of the various school finance proposals' equalization capacity
6. *Cost of bilingual education:* The development of a weighted pupil factor for bilingual education in Texas and other states
7. *Cost disparities:* An index of price differentials among Texas schools and estimates of the index values for selected school districts

When completed, each of the seven studies listed above had a strong impact upon subsequent legislation and litigation. For example, the question of "Who lives in low wealth school districts?" raised in the U.S. Supreme Court's review of *Rodriguez,* was decisively answered in the wealth disparities study that determined a high negative correlation between the number of minority and economically disadvantaged children, and district wealth.

THE MATERIALS DEVELOPMENT AGENDA

The early research agenda was paralleled by an extensive publication effort. A TEE newsletter was published in all but one of the first eight months of operation.

On December 1, 1972, TEE sponsored a state conference on school finance reform in cooperation with the National Urban Coalition, the San Antonio Urban Coalition and the Commission for Mexican American Affairs. The proceedings of that conference were written by Lanny Sinkin and Rosemary Catacalos, acting as interim staff for the organization, and resulted in the publication, *School Finance Reform: Alternatives for the State of Texas.*

After incorporation, TEE's first publication was *Texas School Finance: A Basic Primer,* a simple, concise booklet that explained the workings of the Texas system of public school finance and the basic problems inherent in that system.[32] Co-authored by José A. Cárdenas and Rosemary Catacalos, the booklet limited the use of specialized terminology to provide the general public with an easily understandable presentation of a highly technical subject. Lionel Sosa from Sosart created simple but effective illustrations of each concept addressed in the book. This publication was revised almost every time that the Texas Legislature met and made changes in the school finance structure. Some of the graphics from the original publication are still being used by IDRA in current publications.

Shortly after its appearance, the Basic Primer was translated, and the Spanish version, *Financiamiento Escolar en Texas: Un Texto Básico,* was also published and distributed in 1973.[33] The Spanish version turned out to be a highly creative endeavor, since much of the school finance terminology had no equivalents in the Spanish language. The "local fund assignment" became "el fondo asignado local" for want of an appropriate term.

A series of eight articles written by me were printed in various Texas newspapers, including *The San Antonio Light.*[34] They appeared in that newspaper from January 13 to January 21, 1974. Juventino Guerra, Jr. and Maria Rayos, TEE staff members, published this series of articles early in 1974 under the title, *The Crisis in School Finance.*[35]

Dr. Daniel C. Morgan, Jr. from The University of Texas at Austin wrote a booklet for TEE, *School Finance Re-*

form in Texas: A Brief History and an Evaluation of Present Conditions, and it was published by TEE in 1974.[36] Some of the contents of this booklet dealing with the *Rodriguez* case are presented in Chapter 2 of this publication.

As part of our research effort, Robert Brischetto and Steve Bush, a computer consultant to TEE, established an impressive data base on school finance. The contents of this data base were published by TEE as *A School Finance Data Base for Texas: A User Manual* in April of 1974.[37] Many advocacy organizations used this publication to request data from the TEE bank.

In March 1974, in cooperation with the Southwestern Schools Study Project at Our Lady of the Lake University and with funds from the National Institute of Education, TEE published *Texas School Finance Data*, a listing of all school districts in Texas with accompanying federal Department of Health, Education and Welfare 1971 demographic data. It provided the total enrollment and average daily attendance for each district with breakdowns for Mexican Americans and African Americans. It also provided market values of taxable property, tax rates and per pupil expenditures. This unique publication provided a stunning revelation on disparities in school wealth, tax effort and expenditures. To my knowledge, this was the first time that such information was available to the general public, and it became an annual TEE/IDRA publication until in later years it was published routinely by the Texas Research League and subsequently the Texas Education Agency.

Still smarting over the lack of low wealth district support for the *Rodriguez* court case, TEE published a book in February, 1975, entitled, *Which Are the Poor School Districts?*[38] The following is from the text of the book:

> . . . With the exception of the San Antonio Independent School District, whose board passed a resolution in support of the *Rodriguez* decision, no other school district is known to have expressed support, relief, or happiness over the *Rodriguez* case. A part of the reason for this lack of positive reaction to *Rodriguez* can be attributed to questions which the *Rodriguez* case left unanswered, and misconceptions in the media, in the legislature, and in school districts of what implications the court ruling would have on the 1,149 school districts of the state. An association of tax assessors and collectors expressed concern over the property tax being declared unconstitutional, a question not addressed in the *Rodriguez* case. Brokerage houses questioned the validity of school bonds being held by investors until the court issued a supplemental ruling which indicated that such bonds and district liability were not involved in the *Rodriguez* case. School systems with extensive building programs were uncertain as to what action to take in implementing bond elections, sale of bonds, and construction of facilities.
>
> Conspicuous by its absence was a favorable reaction to *Rodriguez* by the "poor" school districts which had much to gain and nothing to lose through the *Rodriguez* decision. From the time of the lower court's action in December 1971 to March 21, 1973, when the lower court's decision was reversed by the Supreme Court, the media, legislative report's, and professional conferences were completely void of enthusiasm or support for the lower court's decision. On the contrary, school districts, individually and collectively, enacted resolutions deploring the *Rodriguez* decision and committing support and financial resources for the appeal of the case to the Supreme Court. One school district, which is one of the 10 poorest out of the 1,149 in Texas, enacted a unanimous Board resolution against the *Rodriguez* case and in support of the appeal. The reason for this action is documented in the board's minutes in which legal counsel warned the school district that the *Rodriguez* case would lead to a consolidation of all school districts in Texas, and that this specific school district would have to share its financial resources with the "poor" school districts in Texas.
>
> An analysis of school district behavior during *Rodriguez* days indicates that few school districts were aware of their relative wealth and the effects of extensive state equalization. Further analysis indicates that most of the 1,149 school districts in Texas perceived their financial situation as being above average and in relatively high status, especially as it related to the "Edgewoods" of the state. There is reason to believe that lack of awareness of relative wealth of school districts in the state still persists in Texas. Although school districts may understand that they are experiencing a financial crisis, the crisis is perceived as affecting all school districts rather than being more severe in some than in others. Very recent publications concerning finance reform in Texas continue to present erroneous facts of relative wealth. For example, a newspaper editorial in Texas re-

cently identified the Houston Independent School District as one of the wealthiest school systems in the state. Although this school district has the largest budget in the state, it is by no means a wealthy district. In fact, the tax base of the school district places it just barely above the state average, and its wealth is many times less than the truly wealthy districts of the state.

Measurement of Wealth In order to shed some light on these misconceptions, it is necessary to ascertain how local district wealth is measured, and apply the measures to school districts in the state.

Local wealth can most adequately be measured in terms of the market value of taxable property in proportion to the number of students served by the school system. The term, "market value of taxable property" may lend itself to misunderstandings. Taxing procedures for school systems in the State of Texas utilize an array of variables that make comparisons difficult to establish. Basic to the procedure for levying taxes is the concept of market value or "true market value." This term denotes the values of a property item eligible for taxation by a school district. In essence, it is the worth of a property or other item of real estate if it were placed and sold on the market. Since not all properties are purchased and sold periodically, for some properties it is a hypothetical or an abstract amount.

The value of property for taxing purposes is determined by the "assessed valuation" of the property. This is the amount used by taxing entities for taxation purposes and is commonly a percentage of the true or appraised market value. Each school system or other entity determines the assessment ratio which is to be used for taxing purposes. Therefore, a piece of property worth $10,000 under a uniform assessment ratio of 80 percent is carried in the tax rolls of a school district at an assessed valuation of $8,000.

The amount of tax collected for a piece of property is also determined by the tax rate utilized by the taxing entity. This tax rate is applied to the assessed valuation. Thus, a piece of property valued at $10,000 in a school district with an assessment of 80 percent thereby carried on the tax rolls at an assessed valuation of $8,000, if taxed at $1 per $100 assessed valuation would produce $80 per year in tax revenues to the school district.

Since most school districts have different and varying assessment ratios and tax rates, it is difficult to compare local wealth, tax effort, and yield. The method of affording comparability to local wealth is to determine or estimate the market value of taxable properties on the basis of tax rolls and assessment ratios utilized by school districts. When an allowance has been made for assessment ratios, the market value of taxable property in a school district may be determined.

Comparable Wealth In order to ascertain *relative* local wealth, it is necessary to take into account the market value of taxable property as well as the number of school children to be served by local tax revenues. Dividing the market value of taxable property in each school district by the average daily attendance for each district produces market value divided by average daily attendance (MV / ADA), which can be compared with a similar MV / ADA of all other school districts. If a similar computation is done for the state as a whole, then the MV / ADA for each school district can be compared to the MV / ADA of the state. School districts with a lower MV / ADA than that for the state then can be classified as "poor" or "below average" school districts. If it is desired to produce further breakdowns of above average and below average, all of the school districts can be divided into "quartiles." A quartile is one-fourth of the school districts: (1) rich; (2) above average but not very rich; (3) below average but not very poor; and (4) poor school districts.

The tables in Appendix 1 group the various school districts in Texas into the four classifications described above. The table lists the name of the school district, the Texas county in which it is located, the market value divided by average daily attendance, the average daily attendance, and the district's rank as compared to the 1,088 other districts in Texas.

A close look at various school systems in Texas may produce unexpected results. One reason for this is that the financial resources available to school districts is not only determined by taxable wealth, but also by the tax rate utilized. Some school districts have been perceived as wealthy school

> districts due to the yield of an especially high tax rate, sometimes two and three times the state average, but are actually in a handicapped category due to the low taxable wealth.
>
> Other school districts may have relatively higher expenditures in proportion to the wealth because of local monies derived from other tax revenues. School districts located close to federal installations have received PL 874 Federal Impact Aid which is commonly classified as a local revenue though not arising from taxation. Other school districts receive payments in lieu of taxes from non-taxable properties in the school district. These, too, are classified as local revenues although not the direct product of the district taxable wealth.

The remainder of the publication lists school districts and their market value wealth organized into "rich," "above average," "below average" and "poor" categories. My contention that even school district administrators had little knowledge about the relative wealth of their school districts proved to be an understatement. The TEE office was flooded with telephone calls and mail from hundreds of the 1,088 school districts protesting the categories in which the districts had been placed. Superintendents from very wealthy school districts claimed that they were not rich, although the claim was usually based on limited tax revenues from ridiculously low tax rates. Superintendents from poor school districts claimed to be much richer than what the data indicated. In most of these latter protests, the basis for the protest was that they were wealthier than neighboring school districts, although the data indicated that in comparison to the state average, both were dirt poor.

This publication substantiated the old adage about "being poor and not knowing it." I imagine that being poor, or being perceived as poor, has a negative social connotation in Texas that demands exclusion from the category if one is to preserve one's pride. It is not unusual for an entity to avoid the stigma of being deemed poor even when the exclusion may be unreal and even detrimental. I once saw a protest filed by a community which took exception to not being included in a list published by a federal agency of cities which could be expected to be bombed by the Soviets in the event of nuclear war. The city council listed all the assets of the city and demanded that they be placed on the list of cities expected to be destroyed by nuclear blasts. Regardless of the reason for the school district reaction to the contents of the publication, it turned out to be an eye opener for the Texas public school community and the general public.

During the entire 25-year reform period, on only two occasions did TEE/IDRA submit a school finance plan for legislative consideration. The two exceptions were when I served as co-master in *Edgewood v. Kirby* and the co-masters were specifically requested by the court to develop and submit an equitable plan which would be used as a court-ordered plan in case the legislature failed to come up with its own plan in response to the orders of the courts. The other occasion was the development of the county tax unit system, which I still deem the most equitable and least expensive plan for an equitable system of school finance. The former plan was not utilized because the same day that the plan by the co-masters was made public, the governor and the legislature finalized a plan of their own. The county tax unit plan was eventually enacted and implemented, but the collection of taxes at the county (or multi-county) level with subsequent distribution to the various school districts in the unit was found unconstitutional by the Texas Supreme Court.

There were three strong strategic reasons for our reluctance to develop and promote a TEE/IDRA plan. First, any plan developed and promoted by us would provide 100 percent equity which would not have been politically feasible. Total equity was inconceivable in 1973; total equity is still unacceptable in 1996. A plan that would have been ideal for us would have been described as "pie-in-the-sky" and immediately rejected by all participants in the reform movement, opponents and proponents alike.

Second, the development of any plan that afforded less than complete equity would have compromised the organization. Any plan that provided equity for a percentage of the children or provided a percentage of equity for all of the children would have been a rejection of TEE/IDRA's basic principle that all children are entitled to equal educational opportunity. The acceptance of anything less than complete equity would then place us in the position of determining how much less opportunity is appropriate and acceptable.

Third, although we were aware that a completely equitable system was not likely to be enacted and that in order to pass legislation it was often necessary to make temporary compromises, it was bad strategy for TEE/IDRA to begin compromising prior to the inevitable negotiations. Each plan submitted to the legislature for consideration lost ground as it became eroded during the legislative process. Advocates of school finance reform negotiated away from the ideal in the House and Senate committees, on the floor of each chamber, on the final chamber versions, in the joint House/Senate compromise committee and in the enacted version. So much of the initial potential gains were lost to "save harmless" provisions which guaranteed that past privileged positions would be maintained and to the erosion of equalization provisions, that the initiation of a plan with less than ideal equity at its start was doomed from the beginning.

School finance reform was not the only topic addressed in TEE publications. Many years before the incorporation of TEE, I had developed serious reservations concerning the appropriateness of instructional programs for atypical students. The education of minority, economically disadvantaged, limited English proficient, migrant and immigrant students left much to be desired. Although 50 percent dropout rates for Hispanic students in 1996 can be considered an educational scandal, dropout rates of 80 percent, 90 percent and even 100 percent were not uncommon in the past. By 1973 and the incorporation of TEE, I frequently remarked that it would be lamentable if additional resources resulting from our effort were to be utilized for doing the wrong things better. As more money became available to low wealth school districts, TEE/IDRA efforts for the improvement of school programs and services increased. At present, the continuing effort for school finance equity is but a small portion of IDRA activity.

During the first two years of TEE existence, I authored a conceptual framework for a national program in bilingual education, a criticism of the current use of standardized tests, an equitable education plan for the Denver public schools, a protest against the use of bilingual education programs for the segregation of children and, with Blandina "Bambi" Cardenas, *The Theory of Incompatibilities*, a comprehensive approach for the development of equitable school programs for atypical students.[39] (For further information on these publications see Cárdenas, José A., *Multicultural Education: A Generation of Advocacy*.)[10]

THE DISSEMINATION AGENDA

The research and development components of TEE were accompanied by an organized dissemination of information effort. Since the founding of the organization, we naively believed that the problem of inadequate resources for low wealth districts was mostly attributed to public ignorance about the inequities and inadequacies of the system. We felt that if disparities in funding were to be made public knowledge, the general public would demand immediate and extensive reform. In retrospect, it is evident that we grossly underestimated the vested interests of the privileged in the elitist system of education, as well as the political power of the recipients of privileged educational programs and privileged tax treatment. We had no idea of the extensions of myths, the creation of distractions, the presentation of red herrings, the distortion of facts, and the use of political clout that were to be encountered in the 25-year effort to reform the schools.

The naive belief that the effort would be concluded in one or two years is reflected in the organizational structure of TEE. During the first two years we did not bother to provide a retirement program; life, health or disability insurance; Social Security benefits; leave policies or adequate facilities for our employees. We actually fought the institutionalization of the organization in the belief that our task would be accomplished in a short period of time, and we would disband and return to our briefly interrupted careers.

This is not to say that TEE's dissemination efforts were fruitless. The partial success of the effort can be attributed to our dissemination of information and to growing public support. During the 25-year period we saw the creation of a large number of advocacy organizations and the development of strong support in some of the public schools, the legislature and the courts. Perhaps our strongest ally in the struggle for school finance reform was the critical change in the economic base of the state and the country. The advent of technology and a shift away from minerals, agriculture and industry to information and services made the already inadequate educational system of Texas completely obsolete. During the reform period we saw a drastic change in the marketing of local and state resources, from cheap unskilled labor to high technology. The business sector shifted its position from strong opposition to reform to at least lukewarm advocacy.

By the 1990s there were really only three entities actively opposing school finance reform: the high wealth school districts still unwilling to lose their privileged program and tax position, the Texas Education Agency which fought reform each step of the way, and the Texas attorney general's office which consistently claimed that they had a responsibility to uphold the prevailing school finance laws, regardless of their unconstitutionality and without regard for the upholding of the equal protection laws which finally prevailed in the courts.

The progress that has been made toward educational equity is still precarious because the lethal combination of greed and stupidity which formed the basis for opposition to educational equity is still around, and it would not be surprising for the three entities listed above—high wealth districts, the Texas Education Agency and the attorney general—to start a regressive move toward educational elitism.

TEE's first dissemination task following its organization was the compiling of a mailing list of potential recipients of school finance information. Attendance at meeting and conferences was recorded, and an initial mailing list was compiled. The list was augmented by all the public media in the state, each of the school districts, every legislator and state official, as well as civic and advocacy organizations. At one time we even initiated a roster of every school board member in the state (almost 10,000), but turnovers of board members were so many and so frequent that the effort was abandoned. We received many requests for subscriptions to the newsletter and numerous requests for our publications. By the end of 1973, we had about 8,000 persons on our TEE/IDRA mailing lists, a number that has remained rather consistent for the past 22 years.

The TEE, and subsequently IDRA, newsletter has always been our main dissemination vehicle. The number distributed has varied between 6,000 and 10,000, depending on content and target audience. Schools and organizations frequently requested large numbers of copies of the newsletter and other TEE/IDRA publications to distribute to classes and organizational members.

The contents of the TEE *Newsletter* in the early years was restricted to less than 10 general topics in school finance and other aspects of educational equity. These included extensive analyses and criticisms of the Texas system, reports on the Texas Legislature and the analysis and criticism of proposed legislative action, the activity of committees and study groups, school finance legislation and litigation in other states, TEE and other research studies, conference notices, agendas and reports, state comparisons and national information. During legislative sessions, the *Newsletter* was frequently supplemented by legislative bulletins on proposed school finance legislation.

Other publications were also widely disseminated. The *Texas School Finance: A Basic Primer* was distributed by mail, in meetings and in conferences. The original printing at TEE expense was augmented by two grants from Clemente Saenz in behalf of the American Lutheran Church. The first grant was for $3,000; the second one was for $10,000.

As the legislature made modest changes in the finance system, the changes were incorporated into the basic primer, and a new edition was published and distributed. Through the years there have been some 10 versions of this simplified explanation of the Texas system of school finance. There is no centralized record of the total number distributed, but it is safe to assume that in the past 25 years, more than 100,000 copies were distributed.

Conferences in school finance have been an important part of the TEE/IDRA dissemination effort since before our incorporation. On December 1, 1972, while the various study groups described by Dr. Dan C. Morgan, Jr. in Chapter 2 were attempting to respond to the three-judge mandate, TEE held a statewide conference. Bob Bothwell with the National Urban Coalition provided participants with a description of the national picture on school finance reform. Four of the state study groups, the State Board of Education Committee, the Texas Research League, the Joint Senate Committee to Study Public School Finance and the Texas State Teachers Association, presented the progress being made in responding to the court mandate. The reports were followed by a panel discussion of TEE participants: Sen. Joe Bernal, Dr. Daniel Morgan, Dr. Earl Lewis (Trinity University) and José A. Cárdenas (Edgewood superintendent).

The December 1972 TEE conference terminated with the following conclusions:

> It was the sense of the conference that the school finance proposals recommended by the Committee of the State Board of Education and by the Texas State Teachers Association are fundamentally inadequate because of their failure to address the issue of fiscal neutrality. The various alternatives proposed by the Mauzy Committee require further study in this respect, along with the development of cost estimates for each of them.

> The conference recommended that TEE should develop a point-by-point critique of these and other proposals for school finance reform in the state of Texas. Proposals should be analyzed according to the following five criteria:
>
> 1. An adequate school finance plan must squarely address the issue of fiscal neutrality. No school district should be made better or worse off financially than any other district merely because of the abundance or paucity of taxable property within its boundaries. This might be accomplished through one or a combination of three devices: (a) full state funding of the cost of education; (b) a compensatory minimum foundation formula without unlimited local enrichment; and (c) power equalization of the tax base.
> 2. The plan should provide funds geared to the specific needs of children in different areas and circumstances. A simple statewide equality of expenditure per pupil is not desirable. Rather, more funds should be directed to districts that have high concentrations of poor and/or minority group children.
> 3. The plan should compensate for the problem of municipal overburden (that is, the extra demands that are made upon the tax base in central cities to support complex municipal services which are not needed in suburban and rural areas).
> 4. The plan should recognize and provide for cost differentials in different parts of the state.
> 5. If the plan involves continued reliance on the property tax, it should include effective proposals for the reform of that tax.
>
> As quickly as possible, TEE should also develop its own proposal for school finance reform, specifically designed to meet these five criteria.
>
> Individual members of TEE should take the initiative in organizing at the grassroots level to contact their legislators and inform them of their concern in this area. Further local and regional conferences on the question of school finance reform may be a useful technique for spreading awareness on the issue. TEE should assist these local efforts by publishing and disseminating widely its analysis of the subject, and by acting as a coordinator and resource agency as necessary. TEE should also establish a dialogue with other statewide organizations interested in this issue as another means of spreading awareness and mobilizing support.

After the reversal of *Rodriguez* and the incorporation of TEE, the organization hosted another state conference on school finance. The conference was held at the Gunter Hotel in San Antonio on August 30, 1973. The conference opened with a welcome in behalf of the city of San Antonio given by Jack Skipper, administrative assistant to Mayor Charles Becker. William Sinkin, chairperson of the TEE Board, presented the rationale of the conference and set the four-part agenda. The financial crisis in the schools was reported by Ed Cody, superintendent of the Northside District in San Antonio; Angel Noe Gonzalez, superintendent of the Crystal City District; Dr. Marlin Brockette from the Texas Education Agency; Dr. Earl Lewis, from Trinity University; and Joe Bernal, executive director of the Commission for Mexican American Affairs and a former Texas state senator.

Guidelines for the shape of the response were presented by Bob Bothwell of the National Urban Coalition; Leonel Castillo, Controller for the city of Houston and a member of the TEE board; John Silard, Washington D.C. attorney and constitutional law expert; and John Callahan, analyst for the federal Advisory Committee on Intergovernmental Relations and advisor to the President and the Congress.

Recent responses to the school finance equity problem in other states were addressed by state Sen. David Kret; Dr. Marshall Harris, advisor to the governor of Florida; Jack Leonard, a staff member of the Florida Senate Education Committee; R. Stephen Browning from the national Lawyers' Committee for Civil Rights Under Law and Dr. Walter Talbot, state superintendent of Utah.

Texas' responses to the problem were presented by Dr. Richard Hooker, special assistant (on school finance) to the Texas Governor; state representative Dan Kubiak, chair of the House Education Committee; state Sen. Nelson Wolff, member of the Senate Education Committee; and state representative Matt Garcia of San Antonio, a long-time advocate and supporter of school finance reform.

The state conference was immediately followed by a series of TEE-sponsored regional conferences involving educators, politicians, community leaders, civic and grass-roots organizations, business people and the general public. Participants averaged about 350 persons at each of the conferences held in San Antonio, McAllen, Dallas, El Paso, Austin, Lubbock, Texarkana, Houston and Fort Worth. A second conference in Houston focused exclusively on educational opportunity for black children. I still refer to these conferences as the "Dog and Pony Shows" where TEE staff and consultants would explain the Texas school finance system, make graphic presentations of wealth, tax and expenditure disparities, and propose alternative solutions for the problem. Presentation were made by prominent educators such as Dr. Mark Yudof from The University of Texas Law School, Dr. Joel Burke, a school finance expert from Syracuse University who had impressed the *Rodriguez* court, state legislators serving on the House and Senate Education Committees (Oscar Mauzy, Dan Kubiak, Ron Clower) and local leaders and citizens. Participants received copies of conference presentations as well as the rapidly increasing publications from TEE.

The dissemination of information on school finance through formal conferences was augmented by many presentations at various group meetings. During a three-month period in the early history of TEE operation, I made the following presentations:

Date	*Meeting*	*Topic*
7/09/73	El Paso, Texas	Minority Education
7/12/73	UCLA, Los Angeles	National Ed Task Force
7/15/73	Crystal City, TX	Chicano Education
7/20/73	Chicago, Illinois	Minority Teacher Training
7/21/73	LULAC State Council	The Need for Reform
7/24/73	Austin, Texas Funding	Bilingual Ed
7/25/73	Trinity University	Problems in School Finance
7/28/73	Mercedes, TX Distric	The Impact of *Rodriguez*
7/29/73	Lubbock, TX	Student Conference
7/30/73	KSAT-TV, San Antonio	School Finance
7/31/73	Texas Education Agency	Funding Bilingual Ed
8/13/73	Adams SC, Colorado	Funding Minority Ed
8/15/73	Duval Co., TX Teachers	School Finance Issues
8/20/73	Northside, TX District	Equality of Opportunity
8/24/73	Lubbock, Texas	Minority Education
8/29/73	CTW Adv. Committee	Hispanic Education
8/30/73	San Antonio	School Finance Conference
9/07/73	Los Angeles, CA	Hispanic Curriculum
9/09/73	KENS-TV, San Antonio	Public School Finance
9/10/73	Washington, D.C.	Dispute Settlement
9/12/73	US Off of Ed, Dallas	Minority Education
9/12/73	UCLA, Los Angeles	The Impact of *Rodriguez*
9/17/73	WOAI-TV, San Antonio	School Finance
9/20/73	San Antonio	American Lutheran Church
9/24/73	San Antonio	Report to TEE Board
9/25/73	Houston, TX	School Finance Training
9/27/73	Houston, TX	Minority Tax Research
9/28/73	E. Los Angeles College	Minority Education
9/28/73	Los Angeles	Report to N E T Force

The hectic pace of the three-month activity schedule listed above was to continue for the next 20 years. As brutal as the pace may seem, it was no greater than the schedule facing the current executive director and other employees of the organization.

The dissemination of information through regional conferences with foundation and National Education

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Task Force funding was augmented by a $13,815 grant from the Texas Committee for the Humanities and Public Policy.

These state and regional conferences, TEE publications, presentations and coverage given by the public media led Dr. Dan Morgan to note that ". . . the level of consciousness [of school finance] of the body politic has been raised appreciably."

TRAINING AND TECHNICAL ASSISTANCE

It was only a few months after the organization of TEE that the training and technical assistance component became operational. TEE/IDRA was the most consistent advocate of school finance reform during the 25-year period, and our dissemination effort was so effective that we could not be ignored by anyone contemplating changes in the system. We were invited to conferences, meetings, committee hearings and negotiation sessions from the very beginning until the present time.

During each legislative session we were requested to meet with legislators with liberal, minority and low wealth constituencies. When we provided our first training session of educational issues to the Mexican American Legislative Caucus, the group was small and relatively powerless. The number of Mexican American legislators has grown to such an extent that it is now a large and powerful influence on legislation. Although the membership of the Mexican American Caucus may divide on many legislative issues, there was never any divisiveness on educational issues. The educational agenda that TEE/IDRA identified and advocated has consistently received unanimous backing from them, including our stand on school finance issues. A similar relationship existed with the Black Legislative Caucus, although the concentration of large numbers of African Americans in large urban districts with better than average wealth (Houston, Dallas, Fort Worth, Austin) sometimes precluded their supporting finance reform issues.

TEE/IDRA also provides extensive training and technical assistance to other organizations. This service was of particular help to grassroots organizations which had considerable political influence but did not have the complicated technical knowledge in school finance. An excellent example of our service to other organizations is our technical assistance to Communities Organized for Public Service (COPS), their early involvement in the Harlandale School District, and the evolution of their activities toward state school finance reform.

The following article from the December 1973 issue of the TEE *Newsletter* describes our initial involvement with the COPS protest in Harlandale:

> **THE HARLANDALE CRISIS: SOURCE OF THE PROBLEM**
>
> **Community Controversy**
>
> The Harlandale community is a part of the City of San Antonio. It is a community in that its schools are organized into an independent school district, separate and distinct from other schools in the city and responsible directly to the Texas Education Agency. Since schools frequently become the main social institutions providing direct services to the residents, school districts tend to form community boundaries as real as municipal and state lines.
>
> During the past months, the Harlandale community has been torn apart by a heated controversy regarding school district expenditures. Local newspapers carried articles about pay raises that had been granted by the board to the superintendent and five other high-level administrative personnel. The administrative pay raises came at a time when instructional personnel were having their salaries cut to the state minimum because of a financial crisis precipitated by a possible loss of federal impact funds, a diminishing tax base, new mandatory programs, and a state policy of no-new-state-taxes. (see "The New Crisis in Public School Finance")[40]
>
> The initial objection to administrative pay raises with teacher pay cuts gave way to an increasing demand for sufficient instructional materials and supplies. Soon, the community was caught in a triangle consisting of advocates for administrative salaries, advocates for teacher salaries, and advocates for increased expenditures for instructional supplies. Surprisingly enough, the large amount of money going toward the retirement of outstanding bonds never entered the argument. In

1973–74, the Harlandale district will spend $678,030 for bonded indebtedness, or 27 percent of all local funds.

Insufficient Funds

Most importantly, however, the debate touched off by the administrative pay raises failed to isolate or address the district's **fundamental** problem, that of insufficient funds. Harlandale's assessment ratio and tax rate make it one of the highest taxed districts in the state. Yet in spite of the extremely high tax rate, the amount of money generated is inadequate for all its needs.

During the current school year (1973–74), Harlandale has $171,219,694 in taxable wealth. The assessment ratio is an almost unheard of 100 percent, meaning that the assessed valuation is equal to the market value. Harlandale levies a $1.20 tax rate per $100 assessed valuation (100 percent of market value) for maintenance and operation and 44ō for bonded indebtedness. With an expected collection rate for the current year of 90 percent, the district will raise $1,849,172 for maintenance and operation, and $678,030 for bonded indebtedness.

Subtracting a local fund assignment of $425,863, which is the district's share of the minimum foundation program, from the $1,849,172 available for maintenance and operation, leaves $1,423,309 in available funds for enrichment of the instructional program. Based on last year's average daily attendance (ADA) of 16,900, the school district has $84.22 per pupil to take care of all expenditures not covered by the minimum foundation program. Expenditures in this category include all of the tax office, the personnel office, accounting, assistant superintendents, coaches, all of the co-curricular activities, and even some of the instructional and maintenance costs.

Attacking the Symptoms

Needless to say, **it cannot be done.** Thus, the district's difficulties in attracting and/or retaining competent administrative staff, providing an equitable salary schedule for teaching and other personnel, sufficient instructional supplies, and an adequate school plant are revealed to be only the symptoms of the much larger problem of inadequate financial resources. Since it has been shown that Harlandale is, practically speaking, already at its maximum financial output, the district must look outside its boundaries for a solution.

In formulating that solution, Harlandale residents might consider the following presuppositions:

1. THE CHILDREN OF THE HARLANDALE DISTRICT ARE ENTITLED TO AN ADEQUATE EDUCATION AS PROVIDED FOR UNDER THE STATE CONSTITUTION. In addition to residing in the school district, the children are citizens and residents of the State of Texas, which has education as one of its primary functions. The State Constitution charges the legislature with establishing an efficient system of schools. The Constitution further states that this obligation to education is for the benefit of the state and in order for a free people to govern themselves.

   Education in Texas, and elsewhere, is not a charitable undertaking by the state. It is its very lifeblood. As evidenced by the plight of Harlandale and countless other school districts throughout the state, this constitutional requirement is not being met under the present school finance system.
2. HARLANDALE IS A POOR SCHOOL DISTRICT. The $501 per year in per pupil expenditures (including $324,058 in federal impact funds no longer available) is only 71 percent of the state average of $704.

   According to a 1972 study by the Texas School Finance Study Groups, Harlandale is the eighth poorest school district out of 1,149 in the state. The $9,415 in taxable wealth per pupil available for the local support of the schools is considered below the state average of $52,00 per pupil.

The high tax rate does not produce sufficient revenues to offset the low taxable wealth in the district. In order for Harlandale to raise as much money per pupil as the average school district in Texas, it would have to levy an illegal tax of $9.16 per $100 valuation, or 5.59 times its current high effort.

3. HOWEVER TEXAS IS NOT A POOR STATE. Texas, while ranking 40th in the nation in per pupil expenditures for education, ranks eighth in state economic wealth.
4. THE PRESENT TEXAS SYSTEM OF PUBLIC SCHOOL FINANCE IS THE BASIC SOURCE OF HARLANDALE'S DILEMMA. Further, the problem is a common one among Texas school districts and requires a coordinated effort at solution. (The states of Utah, Florida and Kansas previously operated their public schools under systems similar to Texas' present system. However, during the past year the citizens and legislatures of these states deemed their school finance methods so inequitable and dysfunctional as to require complete restructuring. The three states now have new finance systems that better meet the educational needs of their school populations.)
5. THERE ARE TWO ALTERNATIVE FOR CHANGING THE CURRENT SCHOOL FINANCE SYSTEM TO IMPROVE HARLANDALE'S SITUATION. Change could come about through legislation or litigation.

   Models for new school finance legislation are being drafted by various private study groups and legislative committees, and a majority vote of both houses of the legislature could approve a new plan.

   In the area of litigation, the *Rodriguez* case became a model for the nation in seeking school finance reform through the courts. The federal district court's finding in favor of Rodriguez was a blessing for the children of Harlandale and the state.

   Later, the Supreme Court reversed *Rodriguez* because the justices failed to establish *federal jurisdiction* for the case, not because the arguments were unsound or inequities did not exist. On the contrary, Justice Powell, writing for the majority, encouraged the plaintiffs to seek a change at the state level to eliminate existing inequities.

Getting at the Problem

The Harlandale crisis is presented here because it is typical and indicative of a statewide situation. School districts throughout the state are reacting to the school finance crisis by attempting to adapt to the meager and inequitable resources available to them or by splitting into intradistrict factions and arguing over the symptoms of the larger problem.

A concerted statewide effort at understanding the total school finance system dilemma could lead citizens to approach the school finance system not as a sacred cow, but as a viable social institution that must adapt to their needs.

Such an approach could result in a vast improvement in the school's financial picture, in Harlandale and throughout the state.

Our analysis of the Harlandale problem resulted in a request from COPS for a training program for their leadership personnel. This was conducted by TEE/IDRA, resulting in an extensive effort by COPS to impact the school finance equity issue. Their efforts culminated in 1985 with the negotiation of a "final solution" with the Ross Perot Committee on Public School Education (COPSE) and Gov. Mark White. Unfortunately, COPS leaders forgot the most important lesson on school finance equity that we had taught them: there cannot be an equitable system without addressing the local enrichment provision. In their negotiations, they agreed on the provisions of House Bill 72 with an extensive amount of equalization aid but with continued unlimited local enrichment. Two years after negotiating their "solution," disparities between high and low wealth districts were higher than before COPS involvement in school finance reform. (see Chapter 7)

Our training and technical assistance efforts increased to the extent that by the end of 1975, this component was already the largest one at IDRA and has remained the largest component ever since.

THE PLEE MARCH ON AUSTIN

Some of the TEE/IDRA activities cannot be placed discretely in one of the four categories of activities. A march on Austin to support school finance reform early in the history of the organization was one such case.

While I was still superintendent of Edgewood, the informal membership of TEE conceptualized a plan to keep the school finance issue in the forefront following the *Rodriguez* reversal by the Supreme Court. It was evident that the only response from the Texas Legislature to the disposition of the court case was a long sigh of relief. A coalition was formed between the TEE membership and the Edgewood District titled the People's Lobby for Equal Education (PLEE). The plan called for PLEE to sponsor a march on Austin to protest the failure of the Texas governor and legislature to come up with any amount of school finance reform. On May 2, 1973, 4,000 people from the Edgewood and Crystal City public schools were bused to Austin where we marched north on Congress Avenue to the state Capitol. (see Dan Morgan, Chapter 2)

After issuing a public statement and hearing a response from Gov. Dolph Briscoe and the legislative leadership, the children from the two school districts were invited by the PLEE leadership to go into the capitol building and to ask legislators and state officials to support our plea for school finance reform.

Needless to say, the presence of some 4,000 unexpected visitors, mostly low wealth Mexican Americans, rattled the state officials. After the children and adult protesters returned home in the district buses, the organizers sat down for lunch at the Nighthawk restaurant on Congress Avenue. A state trooper walked into the restaurant and asked Joe Bernal and me to please accompany him to the capitol where the governor wished to meet with us. Once in his office, Gov. Dolph Briscoe informed us that he had reviewed the state budget and had located $49 million for distribution to low wealth school districts as equalization aid. The amount was trivial, but it did mark the beginning of a long period of concessions that, with the aid of the Texas courts, finally resulted in a much improved system of school finance.

Considering the impact of the PLEE march, it is surprising that it was not repeated during the next 20 years. The fundamental reason is probably the conservative characteristic of the Edgewood board and superintendent immediately following my departure from the district. From the time the acting superintendent in 1973, Dr. Mauro Reyna, was replaced by a permanent superintendent, to the employment of James Vasquez in 1979, the Edgewood district was not even represented in school finance conferences, meetings, legislative committee hearings nor regular and special sessions of the Texas Legislature. I once asked the Edgewood superintendent who followed my tenure why he did not attend all of the meetings and legislative sessions on school finance, and he responded that he had no need to attend; the interests of Edgewood were being looked after by representatives from Dallas County school districts. This situation is analogous to not having to keep an eye on the hen house because the foxes are watching it for you. By the time the dynamic James Vasquez was appointed superintendent in 1979, the arena was moving toward the courts, where Edgewood, under the direction of James Vasquez, again provided the crucial leadership in the fight for school finance reform.

In a 1974 TEE publication, *School Finance Reform in Texas,* Dr. Daniel C. Morgan presents his own perceptions of the PLEE march and its impact upon subsequent legislation:

> On May 2, 1973, between 3,000 and 4,000 persons, most of them Mexican-American children and adults, descended on the capitol building in Austin, Texas, demanding that measures be taken to assure equality of educational opportunity. Gov. Briscoe, politically nervous about his future at this time, opted to speak to the crowd on the steps of the Capitol. At the outset of his speech, the people gave him a very hearty booing. But in the course of his speech, as he promised relief and solution, they cheered him.
>
> A short time after the rally broke up, the governor invited a handful of representatives from the group to talk to him in his office. He proffered an emergency plan which would give money to only the poorest quartile of school districts. But the quantity of money he spoke of was virtually nothing. His offer was rejected. The representatives were properly insulted by the meeting because it gave the appearance of calling them so ignorant (because they were Mexican Americans) that they could not tell that his plan was offering virtually nothing whatsoever. A more charitable interpretation was that Gov. Briscoe himself did not have any notion of what he was attempting to talk about

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because of the complexities of Texas school finance. And he was speaking to a group of representatives who had helped bring and pursue the *Rodriguez* case, a group of people from Edgewood from whence the famous Supreme Court case had originated.

Partly as a consequence of the PLEE march and its subsequent meeting, and partly as a consequence of the sudden coalition of TSTA with the "reformers" (it occurred the same night as the meeting with the governor), the House leadership took a reading and decided that they narrowly had the votes required to pass their own Briscoe-defiant legislation. This was House Bill 946.

HB 946 was by no means a "no wealth discrimination" measure. But it had some heavy equalization features, as well as some genuine increases for poor districts; and of course, it had some plums for the teachers in the state, not merely in the poorest districts. For equalization purposes, it would establish a funding system whereby any district willing to impose an incremental property tax of 40 cents per $100 property value could obtain funds from the state government above the foundation school program minimum to make up the difference between its yield and $300 per pupil. On the critical vote, the vote to shut off the debate, H.B. 946 passed by a margin of one vote 71-70. However, for the record, the votes became 83-50 and 95-47 on successive readings. It was difficult to tell whether all of this meant popular support for the finance reform, fear of the diminished but ever-present power of the Texas State Teachers Association (still hundreds of thousands of votes in the entire state), fear of the power of the Speaker, and/or the presence of a new urban-minority-labor-liberal-poor district coalition which might hold power for future reform.

But in the Senate, H.B. 946 had little chance, although at times it looked as if it might fare much better than the seasoned political commentator might have anticipated. The pressure of TSTA seemed to be the major reason. So while its power was nothing comparable to former years, TSTA was still surprisingly formidable. In the Education Committee hearings, the staff of the governor's committee and a few senators with memories (see above) had their revenge, as they and conservative senators killed 946. Then wildly spectacular compromises between House and Senate began—both illogical and frantic, and completely absent of leadership. Such behavior continued until the closing minutes of the session. Nothing was passed. The governor was either embarrassed or disgraced (depending on the perspective of the commentator), TSTA eventually looked positively ridiculous and failed to gain a thing, and the poor districts and minorities gained no money, but retained some dignity and some hope for the future.

Following adjournment, study groups were to continue research in order to be ready for the legislative session in January, 1975, or perhaps even earlier if a special session should take place. The governor now has a study group, the Senate has one, the House has several, the state board and the Texas Education Agency continue to have one, the Texas Research League continues in the research game, the Legislative Property Tax Committee and the Texas Advisory Commission on Intergovernmental Relations have pertinent work under way, and there are several less prominent study groups. One research group of particular importance is the Texans for Educational Excellence (TEE). Headed by the prominent former superintendent of the Edgewood School District, Dr. José A. Cárdenas, it has come into the game clearly on the side of the poorest districts, and it appears at this writing to be among the most active and most competent of groups.

But the most powerful of study groups is in the one by the governor, titled the Governor's Office of Educational Research and Planning. The fact that it takes the name of the "Governor's Office" is suggestive of power; also, it is headed by a prominent man in education finance in Texas, Dr. Richard Hooker. It also has a large and high-degreed staff, with considerable money to spend. To date, Hooker's group has set an overly ambitious research agenda (one which cannot possibly be attained within their time constraints); it has gone to very great lengths to establish good relations with all concerned groups, feeling that the decisions will ultimately be political and that success will depend in large part on popularity. Initially, the Hooker group appeared convinced that capital and debt service must remain the sole responsibility of local districts. To reformers, such thought was stepping off on the wrong foot, an indication that the group has little feeling for the immense disparities in the wealth of school districts of Texas and little hope of anything resembling no wealth discrimination. The Hooker group has recanted, however, and is presently studying the problem, and the staff appears sympathetic. However, the group has indeed rejected concepts of no wealth discrimination and genuine equal educational opportunity, saying instead that it is wise to gain the maximum of equalization consistent with political feasibility. Groups, such as TEE, see this as giving away most of the good cards before the game's betting and play begin. It is clear, however, that Gov. Briscoe has no intention of discussing seriously plans which will equalize the fiscal capacities of districts.

The Senate Education Committee's study group, headed by Camilla Bordie of the state's legislative council, is dedicated to genuine structural reform. However, it is unclear that the education committee to whom she reports will be willing to adopt such reforms. It is questionable that the committee chairman, Oscar Mauzy, controls his education committee. At present, the Senate Education Committee, as seen by its members (as opposed to the staff), appears to be doing little more than keeping its hand in the game.

The House's Education Committee is less powerful, particularly with doubt as to who the next Speaker will be or who will compose the new education committee after January 1975. The present chairman, Dan Kubiak, continues to have very strong affinity for H.B. 946 or some close substitute for it.

The powerful Texas Education Agency will soon have a new head, Dr. Marlin Brockette, who will be replacing Dr. J. W. Edgar, who has been to TEA almost what J. Edgar Hoover was to the FBI. Just what Dr. Brockette will mean for the research and policy is unclear at this writing. The view is that he is more liberal than Edgar, but that he is nevertheless moderate and cautious in approach.

Hopes for the most highly original research, together with research most favorable to poor districts, no wealth discrimination, equal educational opportunity, and minority and disadvantaged student appears to rest with the TEE, which is headquartered in San Antonio. Almost surely, it will be the source of initiation of new court cases and pressure to enforce recent court and legislative decisions.

STAFFING

In April 1973, TEE began formal operations with two full-time and two part-time staff members. I was named executive director and Maria E. Rayos, who served as my secretary in Edgewood moved to TEE with me. Rosemary Catacalos in materials development and Robert Brischetto as research director were employed on a part-time basis. Patrick Mullen was soon added to staff, as well as Juventino "Tino" Guerra, Jr. Upon Tino's departure for law school, Pasquale "Pat" Perillo joined the staff.

The size of the staff remained small until 1975, when TEE/IDRA received a federal grant for the implementation of a desegregation technical assistance center. The immediate growth from a staff of six people to a staff of 35 was not a big problem in that many of the persons I had worked with in Edgewood felt stymied by the district's temporary abandonment of innovation and were eager to return to the development of new programs responding to the needs of minority students. The following TEE/IDRA staff members had worked previously with me in the Edgewood District: Maria Rayos, Pat Mullen, Tino Guerra, Alicia Salinas, Irma Guadarrama, Blandina "Bambi" Cardenas, Rebecca "Becky" Barrera, Kay Carragone, Abelardo Villarreal and Gloria Zamora.

The number of staff positions continued to grow until 1981, when the organization had 86 staff positions at its peak. The rapid growth of the organization led to some sacrificing of quality for quantity, and the creation of some amount of bureaucracy. Due to extensive federal cutbacks in educational support during the Reagan administration, IDRA cut back in staffing to about 40 persons, a number that appears ideal for creative work, quality control and a minimum of organizational bureaucracy. The organization has stayed at this level of staffing until the present.

Acquiring academic credentials and upgrading skills was strongly encouraged at TEE/IDRA. At least 20 persons employed by the organization initiated, worked in, or completed a program that resulted in the attainment of a doctorate degree.

EVALUATION

Toward the end of its first year of operation, TEE made a request for continuation funding from the Ford and Carnegie foundations through the National Urban Coalition. Prior to making a commitment for additional funds, Robert Bothwell of the National Urban Coalition requested a thorough evaluation of the first year of TEE operations.

Bothwell employed an impressive three-person team of evaluators, Robert T. Mann, Florida legislator, appellate court judge and law professor; Abel McBride, New Mexico legislator and educator; and William Coleman, former director of the Advisory Commission on Intergovernmental Relations (ACIR) in Washington, D.C. and a member of the President's Commission on School Finance.

The evaluation team visited with TEE staff and board and then met with political leaders, educators, legislators and members of state and local civic organizations. The evaluators traveled to Austin where they met with the lieutenant governor, the attorney general, 18 legislators, six members of the constitutional convention, personnel from the Juárez-Lincoln Center, the Senate Education Committee, The University of Texas at Austin, the Mexican American School Board Members Association, the Texas Education Agency, the Governor's Office of Research and Planning, the Texas Advisory Commission on Inter-governmental Relations, the Texas Research League, the Texas Constitutional Convention, the Texas Municipal League, the Texas League of Women Voters, the Austin Independent School District and the accounting firm of Peat, Marwick and Mitchell.

In Houston, the evaluators met with personnel from the City of Houston, the Catholic Diocesan Development Fund, MAEC-ESSA, The University of Houston, the League of Women Voters, the Presbyterian Church, the Houston Independent School District and the Houston *Chronicle*. In the Rio Grande Valley they met with local attorneys, political and business leaders, three school superintendents, the state-supported Regional Education Service Center I, and staff from Pan American University.

Based on broad-based interviews in San Antonio, Austin, Houston and the Rio Grande Valley, the evaluation team submitted a report to the National Urban Coalition and the two foundations contributing support. The report presents a one-paragraph "Overall Impression" of TEE written by Robert T. Mann:

> Texans for Education Excellence's program strikes me as highly worthy of continued foundation and National Urban Coalition support. It is a competent, down-to-earth, pragmatic, but very dedicated effort to examine and bring about changes in school finance in Texas. A result of the work will have a substantial impact in Texas and will also have value for similar efforts in other states.

Mann further observed, "Texans for Educational Excellence is one of the most worthy beneficiaries of foundation support which I have encountered."

In behalf of the evaluation team, Mann made the following recommendations to the funding sources:

> I can recommend continuation of support for TEE without hesitation, but with some accompanying suggestions. TEE's identification with the Mexican-American community is its greatest strength, but needs to be built upon by expansion into the total community, especially the business community whose support for the imposition of taxes at a fair rate and their distribution on a fair formula is needed unless a genuine mass movement can be mounted which will accomplish significant reform by voting power alone. The Florida experience suggests that uniform and full tax assessment is a necessary first step, followed by willingness to levy state taxes as an alternative to the property tax. Equal protection is a less elusive concept where the tax base on which the schools rest is statewide. TEE has the capacity to generate statistical data pertinent to the present unfairness of the property tax assessment system.
>
> It seems unlikely that the present affection for neighborhood schools will make possible the kind of consolidation of school districts that was accomplished in Florida in 1947. Whether the principles underlying the legislative apportionment decisions may be used to effect the elimination of school districts in which too few students and too much wealth are matched, making the tax base

> of commercial and industrial property serve pupils at least roughly on an equal basis, is a question still open, in my judgement, although the Rodriguez decision does not inspire hope.
>
> Litigation should not be abandoned as an avenue open to Texans, and TEE is uniquely equipped to support such litigation with pertinent data.
>
> The political thrust of efforts at school finance reform may take many forms, some of them well-suited to TEE's capabilities and permissible within its restraints. Very little seems to have been done in educating citizens in poor, predominantly white districts in North and East Texas about the fundamentals of school finance. Fragmentation of the state and inclusion of several school districts within legislative districts makes it difficult to tell precisely which legislators have selfish interests in school finance reform, especially when merits of alternative proposals are in question, but TEE's capability seems equal to that of any group, including the Texas Research League, and this sort of expertise is to be cultivated. Perhaps the wiser and more profitable immediate course is to educate members of education committees and the State Board of Education—a neglected body—in the intricacies of school finance. This has proven useful in Florida. Legislators who understand the problem fight harder for its solution. I detected great respect for TEE on the part of Mrs. Bordie, Sen. Oscar Mauzy's chief aide, and from this a program of continuing education may develop. Already such visitors as Dr. Marshall Harris and Jack Leppert, who are knowledgeable about Florida's system, have had some useful input. TEE has a role to fill in the continuance of education of legislators. So far as I could determine, members of the State Board of Education have not yet become a target group, but they could be an effective instrument of reform.
>
> More than financial matters are at stake. The recent legislation mandating bilingual education is sound and TEE can help in the implementation of this program, simultaneously gaining credibility in its broader mission.
>
> Much more could be written about TEE and the opportunities it faces. It is not widely enough known, and not universally liked, but it is respected. It deserves continued outside support and the encouragement toward greater local support in many Texas communities.

It may appear that TEE was being subjected to a very intensive and extensive evaluation process for an annual grant of less than $100,000. This may be so, but one should keep in mind that up to this time, very few Hispanic groups had received any amount of funding. The negative stereotype of Mexicans sleeping under a cactus or projected as "bandidos" in advertisements raised serious questions about the ability of a group of predominantly Mexican Americans to conduct educational research and intervene in the highly complex domain of the state's school finance system. At any rate, the evaluation proved satisfactory, and TEE/IDRA would receive extensive foundation funding for its school finance reform effort in future years. New funding sources continue to request unusually high levels of accountability from the organization, but such evaluative demands have never created a serious problem for the organization since our own accountability standards are usually as high or higher than those of funding sources.

There have been notable exceptions to demands for unusually high accountability. Through the years, TEE/IDRA has created such high credibility with funding sources that our requests for additional assistance have been positively acknowledged immediately. For instance, when the *Edgewood v. Kirby* litigation was being prolonged by continuous defendant appeals and inadequate legislative responses, the financial resources available for legal and research expenditures were in danger of running out. I made one telephone call to Dr. David Hamburg, director of the Carnegie Corporation of New York, and received an immediate commitment for additional funding. By the end of that week we had $50,000 in additional funding to see the lawsuit through its completion.

The meticulous evaluation effort has continued, and it has been augmented by a similarly meticulous financial audit. It is notable that since the first financial audit and throughout TEE/IDRA's 23-year history of annual audits, not a single disallowance, audit exception or other irregularity has been identified by independent certified public accountants, government auditors or auditors for non-government funding sources.

In 1991, the Drucker Foundation gave IDRA special recognition for its leadership and the management of innovation in education.

THE CONSTITUTIONAL CONVENTION OF 1974

The Texas Constitution is so lengthy and has been amended so often, that few people in the state have ever read it and even fewer people understand it. On January 8, 1974, members of the legislature met in Austin as a constitutional convention to write a new Constitution for the State of Texas. The convention considered a recommended document developed by the Texas Constitutional Revision Commission as requested by the 63rd Legislature.

We were highly cognizant that the loss of *Rodriguez* was very much dependent on the absence of provisions for education in the federal constitution, and that the outcome of eventual litigation in Texas would depend on constitutional language and the courts' interpretation of the language. As a result, TEE's school reform agenda in 1974 had to focus on educational provisions in the proposed constitution.

TEE's efforts in preparing for the constitutional convention were facilitated by assistance from David C. Long of the Washington-based Lawyers' Committee for Civil Rights Under Law. In August 1973, Long furnished TEE with a detailed analysis of the provisions of the existing Texas Constitution as they affected reform of school finance. This legal review formed the basis for reform advocates to evaluate the merits of the many proposals presented in the revision process.

The original recommendations on education, submitted by the Revision Commission as Article VII in the proposed constitution, gave considerable strength in support of an equitable system of school finance. The recommendation in Section 1. Equitable Support of Free Public Schools reads as follows:

> (a) A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature to establish and make suitable provision for the equitable support and maintenance of an efficient system of free public schools and to provide equal educational opportunity for each person in the state.
>
> (b) In distributing state resources in support of the free public schools, the Legislature shall ensure that the quality of education made available shall not be based on wealth other than the wealth of the state as a whole and that state-supported educational programs shall recognize variations in the backgrounds, needs, and abilities of all students. In distributing state resources, the Legislature may take into account the variations in local tax burden to support other local government services.

The recommended article on education proposed by the Revision Commission included almost every goal for an equitable school finance system expounded by TEE.

1. It strengthened the language of the general provision for education by specifying "the equitable support and maintenance" of the efficient system provision of the existing Constitution.
2. It called for equal educational opportunity for each person in the state.
3. It specified that the distribution of state resources be based on the wealth of the state as a whole.
4. It made ample provisions for the special needs of atypical children.
5. It responded to the growing urban problem of tax overburden.

Had the legislature, acting as a constitutional convention, accepted the education article as recommended by the Revision Commission, TEE's goals would have been met within one year of TEE's organization. But, as was to be the case with every subsequent legislative proposal, the ideal language of the recommendations was quickly eroded in legislative revisions.

The version of the education article as passed by the Education Committee of the Constitutional Convention read as follows:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, the legislature shall provide for a system of free public schools through the secondary level that will furnish each individual equal educational opportunity.
>
> In distributing state support of the free public schools, the legislature shall ensure that the quality of education made available shall not be based on wealth other than the wealth of the state as a whole.

The March 1974 issue of the TEE *Newsletter* notes the changes in the education committee version of Section 1. In the article, "Evolution of the Education Article" four changes were noted:[41]

1) The [education] committee report deletes the Constitutional Revision Commission reference to making "suitable provisions for and equitable support and maintenance of an efficient system of free public schools" and substitutes language making provision solely for a "system of free public schools.". . .
2) Following the language providing for a system of free public schools, the committee report adds to the commission recommendation "through the secondary level . . ."
3) The committee report deletes the language requiring state-supported educational programs to "recognize variations in the backgrounds, needs, and abilities of all students.". . .
4) The committee report deletes wording allowing the legislature to "take into account the variations in local tax burden to support other local government services."

The education committee attempted to justify its change in the Revision Commission's recommendations as an attempt to dispense with language that it considered superfluous and to prevent locking the legislature into a specific school finance plan.

The Constitutional Convention Committee on Style and Drafting made an even more dramatic change in the education article. Its proposal to the convention stated:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, the legislature has the duty to establish and provide by law for the equitable support and maintenance of an efficient system of free public schools below the college level. The system must furnish each individual an equal educational opportunity, but a school district may provide local enrichment of educational programs exceeding the level of funding provided by the state consistent with general law.

The insertion of the provision for local enrichment made the entire section a travesty. Since local enrichment was the main reason for existing disparities, its continuation through a constitutional guarantee would make a mockery of the terms "equitable," "equal educational opportunity" and "efficient" found in other parts of the section.

The influence of the Style and Drafting Committee prevailed, and the final version of the proposed constitution provided the following for Section 1:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature to establish and make suitable provision for the equitable support and maintenance of an efficient system of free public schools below the college level that will furnish each individual an equal educational opportunity.

This provision was subsequently expanded in Section 5 dealing with School and Community Junior College Districts:

> The legislature by general law shall provide for school districts and community junior college districts; and these districts may provide local enrichment of educational programs consistent with general law.

There is no better example of the erosion process which characterized the 25-year school finance reform movement in Texas than the way the proposed constitutional provision for educational equity changed in a short three-month period. The original document framed by the Revision Commission guaranteed educational equity; the resulting document framed by the convention institutionalized and legitimatized school district disparities and the elitist and inequitable system in the state. If the new constitution proposed by the legislature had been adopted, school finance reform would have become a dead issue, and there would have been no grounds for the subsequent *Edgewood* litigation to challenge the inequitable system of school finance in any court.

TEE's sources of funding and its tax-exempt status, which at that time precluded lobbying, prevented a lobbying effort in behalf or against any specific section of the proposed constitution. Since neither the sources of funding or the tax-exempt status prohibited addressing issues and distributing public information, much of the research, materials, training and technical assistance components of the organization centered on a massive dissemination effort of the proposed constitution.

Articles on the progress of the revision process were included in each newsletter, along with *Newsletter* File Supplements which provided extensive information on the changing drafts of the proposed constitution, lists with addresses and phone numbers for all legislators who were also serving in the constitutional convention, and extensive analysis and criticism of the issues involved.

With local co-sponsors, TEE organized and conducted seven regional conferences on the constitutional convention from January through March 1974 in San Antonio, El Paso, Dallas, Houston, McAllen, Lubbock and Austin. All of the conferences were coordinated by TEE staff member Patrick Mullen. The following describes the number of participants and panelists for each of the regional conferences:

Jan. 29: San Antonio—425 registered participants

Speakers: Former state senator and executive director of the Commission for Mexican American Affairs, Joe J. Bernal; political scientist and school finance author Dr. Joel S. Berke from Syracuse University; Dr. Earl M. Lewis from Trinity University and a member of the Constitutional Revision Commission.

Co-sponsors: Commission for Mexican American Affairs, San Antonio Urban Coalition, and the National Education Task Force.

Feb. 5: McAllen—226 registered participants

Speakers: Attorney and City Councilman Rafael Flores, insurance executive and TEE board member Jesse Treviño, Dr. Earl Lewis and Dr. José A. Cárdenas.

Co-sponsors: National Education Task Force, San Antonio Urban Coalition, and the Commission for Mexican American Affairs.

Feb. 12: Dallas—75 registered participants

Speakers: State Sen. Ron Clower, TEE board member Kathlyn Giliam, Joe Bernal and Dr. Earl Lewis.

Co-sponsor: National Education Task Force.

Feb. 17: El Paso—400 registered participants

Speakers: Dr. Joel Burke, Dr. Earl Lewis, and Arthur Vance, representing State Rep. Dan Kubiak.

Co-sponsors: National Education Task Force, El Paso Urban Coalition, Ruben Salazar Foundation, United Methodist Church, LULAC and Mexican American Social Workers.

Feb. 26: Austin—300 registered participants

Speakers: Dr. Earl Lewis, Joe J. Bernal, Rep. Dan Kubiak, and state Sen. Oscar Mauzy.

Co-sponsor: National Education Task Force.

Mar. 12: Lubbock—325 registered participants

Speakers: Dr. Earl Lewis, Dr. Joel S. Berke, Dr. Richard Hooker, director of the Governor's Office of Educational Research and Planning, and State Rep. R.B. "Mac" McAlister.

Co-sponsors: National Education Task Force and the Lubbock League of Women Voters.

Mar. 19: Houston—250 registered participants

Speakers: Bob Bothwell from the Washington-based National Urban Coalition, Dr. Richard Hooker, Dr. Earl Lewis and Ms. Jan Wilbur from the Houston League of Women Voters.

Co-sponsors: National Education Task Force, League of Women Voters and the M.A.E.C. Emergency School Aid Act Project.

The TEE/IDRA effort in opposition to the removal of equal protection guarantees in a new constitution for the State of Texas was augmented by similar opposition by other groups to other sections of the proposed constitution, particularly organized labor's opposition to "right-to-work" provisions. A final document was presented to the constitutional convention in July 1974. Charles Deaton in *A Voter's Guide to the 1974 Texas Constitutional Convention*[42] provides a blow-by-blow description of the conclusion of the constitutional renewal effort.

Debate on the equal educational opportunities provision in the Education Article lasted two and one-half weeks. The provision of equal educational opportunity for all children and the recommendation that the quality of education should be based on the wealth of the state as a whole as drafted by Rep. Dan Kubiak's committee was quickly challenged by Rep. Ray Barnhart from Pasadena. He submitted an amendment providing for the equitable support and maintenance of an efficient system of free public schools and eliminated the provision that the quality of education be based on the wealth of the state as a whole.

Sen. Oscar Mauzy and Rep. Craig Washington successfully amended Barnhart's language by specifying that the state was required to furnish each individual with an equal educational opportunity.

Rep. Ron Clower made an unsuccessful attempt to change the method of distributing the Available School Fund in order to allow more of the funds to go to low wealth districts.

On July 11, 1974, the proposed new constitution came up for a final vote. Despite desperate attempts at passage, the proposed constitution received a 118-62 vote, three votes shy of the 121 needed for legislative enactment.

Deaton reports, "According to later reports, this was the first state constitutional convention in our nation's history to end without producing a document for the people to vote on."[42]

Advocates of school finance reform felt no remorse over the failure of the legislature to function as a constitutional convention to come up with a new constitution. Our attitude that no new constitution was preferable to a bad new constitution was subsequently justified when state litigation based on the old one proved sufficient for finding the state system of school finance unconstitutional.

NETWORKING

Since its inception, TEE/IDRA has been fortunate to work with a large number of organizations, government agencies and individuals who share its commitment to children and the concept of equal educational opportunity. In the school finance area, ties to others were established with the initial organization effort and were continued through the years of legislation and litigation.

The financial support provided by William and Lanny Sinkin of the San Antonio Urban Coalition, Bob Bothwell of the National Urban Coalition, Jim Kelly of the Ford Foundation and Frederick "Fritz" Mosher of the Carnegie Corporation of New York has been previously described. This financial support was strongly augmented by programmatic support. The two sponsoring foundations had established an informal structure of national leaders in school finance. This group met periodically, and the membership and their respective institutions provided ample tutelage and assistance for many years.

With support from Kelly of the Ford Foundation, the National Urban Coalition in Washington initiated a national movement for educational equity. The National Urban Education Task Force was formed in 1973, with Dr. Bernard C. Watson from Temple University serving as chairperson, G.T. Bowden from AT&T, Geraldine Warrick from WNBC in New York and José A. Cárdenas from TEE as co-chairpersons. This group sponsored the School Finance Reform Project headed by Bob Bothwell which served to coordinate legislation and litigation in California, Texas, Michigan, New Jersey, Ohio and other states. The membership of this group exchanged information and research findings and provided assistance to each other during the long years of the reform effort.

A complete listing of other networking organizations would be too extensive to include in this publication, but the following sampling is indicative of the amount of assistance provided to TEE/IDRA during its earliest years:

- Texas Government:
    - Mexican American Legislative Caucus
    - Black Legislative Caucus
    - Texas Education Agency
    - Governor's Office of Educational Research and Planning (Dr.Richard Hooker)
    - Advisory Commission on Intergovernmental Relations
- U.S. Government Agencies:
    - Selected members of the U.S. Congress

- Sen. Walter Mondale of the Select Committee on Equal Educational Opportunity
- U.S. Commission on Civil Rights
- Equal Employment Opportunities Commission
- Community Relations Service of the Department of Justice (Mauricio Ortiz)
- U.S. Office of Education, HEW
- Office of Minority Affairs, HEW (Gilbert Chavez)
- National Institute of Education Task Force on School Finance (Arthur Wise)
- Committee for the Humanities and Public Policy
- Advisory Committee on Intergovernmental Relations (John Callahan)
- HEW Office of Civil Rights (Stan Pottinger, Dorothy Stuck)

Civic, Political and Legal Organizations:

- Texas League of Women Voters and local chapters
- Lawyers' Committee for Civil Rights Under Law (David C. Long and R. Stephen Browning)
- Harvard Center for Law and Education (Paul Dimond, Marian Wright Edelman)
- Urban Education Coalition (Washington, D.C.)
- Common Cause (David Cohen)
- NAACP (James Nabrit)
- NAACP Legal Defense Fund (Jean Fairfax, Shirley Lacey)
- Mexican American Legal Defense and Educational Fund (Mario Obledo, Vilma Martinez, Sanford Jay Rosen)
- Puerto Rican Legal Defense and Education Fund
- ASPIRA of New York
- Southern Regional Council (Atlanta)
- League of United Latin American Citizens (LULAC)
- American G.I. Forum
- Texas Rural Legal Aid
- American Civil Liberties Union (ACLU)
- Democratic Advisory Council of Elected Officials
- Democratic Women of Bexar County
- Washington Research Project (Cynthia Brown)
- The Brookings Institute (Joel Berke)
- The Potomac Institute (Arthur Levin)
- The Urban Institute (Betsy Levin)
- National Council of La Raza (Raul Yzaguirre)
- National Commission for Citizens in Education, Columbia, Md.

Professional Organizations:

- Juarez-Lincoln Center (Austin)
- El Paso Education Research Project
- Texas Association of School Boards
- Texas State Teachers Association
- Council of Chief State School Officers
- American Association of School Administrators (Barbara Sizemore)
- Education Testing Service (William Turnbull)
- Teachers College, Columbia University (Donna E. Shalala)
- National Education Association
- Association of Mexican American Educators
- Institute for Education Finance
- National Education Finance Project (Roe Johns, Kern Alexander)
- Education Commission of the States
- Education Finance Research Project, California (Robert Singleton)

- Chicano Education Project, Denver
- New Jersey Education Reform Project (Richard Roper)
- Institute for Educational Leadership (Norman Drachler)
- University of California at Berkeley (James Guthrie, Charles Benson, John Coons)
- Education Law Center, New Jersey (Paul Tractenberg)
- National Education Task Force de la Raza (Rupert Trujillo, Henry J. Casso, Manuel Andrade, Salomon Flores, Robert Segura)

Religious Organizations:
- American Lutheran Church (Clemente Saenz)
- United Ministries in Public Education, Washington, D.C.
- Sunset Presbyterian Church, Dallas
- Texas Conference of Churches, Austin
- U.S. Catholic Conference
- Christian Life Commission of the Baptist Church
- Commission on Church & Society of the Archdiocese of San Antonio

Corporate, Foundations and Private Organizations:
- Ford Foundation
- Carnegie Corporation of New York
- Rockefeller Foundation
- Spencer Foundation (Thomas James)
- AT&T, Education Relations
- Greater San Antonio Chamber of Commerce
- General Searing Corp. (Francis Keppel)
- Rauh & Silard, Washington, D.C. (John Silard)
- Mark Yudof, The University of Texas Law School
- E.B. "Rusty" Carter, Trinity University

There were cases in which a specific advocacy group for equal educational opportunity simply did not exist. In some of these cases, TEE/IDRA provided either organizational and/or financial support for the creation of such groups. The new organizations were encouraged to identify and acquire their own sources of funds, and when successful in doing so, became independent entities. Many of these organizations are still functional today. The following organizations were created through TEE/IDRA efforts during its early years:

- National Association for Bilingual Education (Albar Peña)
- Texas Association for Bilingual Education
- Texas Association of Mexican American Educators
- Texas Association of Black Educators
- Texas Association of Mexican American School Board Members
- Texas Association of Black School Board Members
- Texas Association of Chicanos in Higher Education
- Minority Caucus, National Association of School Boards
- Minority Caucus, American Education Research Association
- The Equity Center (formerly the IDRA Tax Project)

The extensive networking of TEE/IDRA staff brought an amazing amount of expertise to the organization's quest for school finance equity and equal educational opportunities. This networking provided TEE/IDRA with ample opportunities to present minority perspectives on the work of the other networking organizations. On many occasions, I attended conferences and meetings where I was the only minority person in the group. I attended hundreds of conferences in which I was the first Hispanic ever invited to attend. This participation was very effective in the development of a small, but important, local, state and national focus on the educational needs of minorities in general, and Hispanics in particular.

LITIGATION

The Supreme Court reversal of *Rodriguez,* with the accompanying referral to the state for remediation, led to an early planning for litigation in a Texas court. Toward this end, TEE organized and sponsored a conference on school finance litigation in San Antonio on June 24–25, 1974. Invitees included an extensive number of lawyers, educators, government officials and researchers from the local, state and national levels.

The conference was initiated by William Sinkin as Chairman of the board of TEE. José A. Cárdenas presented conference background and objectives, and Dr. Daniel Morgan presented an overview of school finance reform in Texas. Robert Brischetto presented research studies completed and in-process in the post-*Rodriguez* era. Participants then analyzed prospects for federal and state litigation with a focus on legal principles to be addressed in the litigation and research needs in support of it.

The conference was deemed successful, and it led to an extensive study of litigation needs and strategy. In a July 1974 letter, Sanford Jay Rosen, legal director for the Mexican American Legal Defense and Educational Fund (MALDEF), stated the following:

> I want to commend you for what I thought was a very fine conference, which I found extremely productive. Although, as almost all of the lawyers agreed, the prospects for re-litigation of public school financing issues in Texas is not promising at this time, other avenues of relief may be available. Hence, continued research would be appropriate.
>
> Since no formal notes were taken of the conference, you might find useful an outline of the kinds of evidence or data I think are called for by Justice Powell's decision in *Rodriguez.* Regardless of whether or not litigation is brought, I think that we would find such data extremely useful. First, collection of these data should prove helpful in whatever political activity takes place within the State of Texas to reform public school financing. Second, collection of such data will help us select individual school districts that might be appropriate for more classical school desegregation and equal educational opportunity litigation. Especially will these data be helpful if you can also collect data on inter-district disparities.
>
> Careful reading of Justice Powell's opinion in the *Rodriguez* case strongly suggests to me that he is only holding out false promise to us. I suspect that even if we were to come up with the kind of data that he says was missing in the *Rodriguez* case, he might still rule against our claim. Whether he could continue to control the members of his majority, in the face of such a factual showing, is another question. For example, Mr. Justice Stewart might move over to the dissenter's at that point. In any event, taking Mr. Justice Powell's opinion at face value, I am able to identify some 13 areas for future research. (Basically, I have read Mr. Justice Powell's opinion specifically to identify the types of questions he said were not answered or were inadequately answered, on the record in the *Rodriguez* case.)
>
> 1. In a systematic fashion, we must locate the poor. Are they in fact clustered around commercials and industrial areas, as the Court surmised from the Connecticut study? Where are the poor?
> 2. What is the local effective tax yield, district by district, within the State of Texas? What is the effective tax yield for each school district, taking into account municipal overburden?
> 3. Can you document something approaching absolute or total deprivation of educational opportunity in any of the districts in the State of Texas? Can you demonstrate something on the order of the total lack of educational opportunity suffered by the mono-lingual Chinese students in San Francisco, as found in the *Lau* case? If you cannot demonstrate total deprivation, how gross are the top to bottom disparities that you can demonstrate, district by district? Do you have criteria through which you can demonstrate either absolute (or near absolute) or disparate deprivation. Suffice it to say, I agree with David Long and Ed Steinman that the strongest post-*Rodriguez* evidence to be marshalled will concern horror stories of incontrovertibly inadequate educational experiences.

4. According to the Supreme Court, . . . the Texas Legislature has endeavored to 'guarantee for the welfare of the state as a whole, that all people shall have at least an adequate program of education. This is what is meant by a "Minimum Foundation Program of Education.'" 411 U.S. 1, 24.

   Does this so-called "minimum foundation program" accomplish the purpose asserted by the state? In other words, to what extent does the "minimum foundation program" accomplish the end of providing "at least an adequate program of education"?
5. Can we demonstrate the comparative discrimination theory? (411 U.S. at 25–26). In other words can we ". . . prove that direct correlation exists between the wealth of families within the district and the expenditures therein for education." That is, along a continuum, does it follow generally that the poorer the family, the lower the dollar amount of education received by that family's children?
6. Is it true that there is reverse correlation, between family income and dollar amount spent on education per student for the middle 90 percent of the Texas School Districts? If so, we are in trouble. (411 U.S. at 27.)
7. We must identify the poor. According to Mr. Justice Powell we must identify and define them as closely as possible with so-called "indigents." I suspect we will do best by identifying the poor as people who fall below state or federal poverty guidelines. We probably should run our correlation for both state and federal poverty guidelines, if they differ. You can then try to impress the decision-maker with the correlations that are most advantageous to our case.
8. Can we establish any correlations between education, or the lack of education, and enjoyment of political rights? (And enjoyment of economic benefits?) Can we demonstrate, for example, through the use of dropout and achievement statistics compared with jury and voting participation, that there is a direct correlation between inadequate education (if that can be defined) and inability or failure to enjoy or exercise political process? (see 411 U.S. at 28–37)
9. Can we charge, and hopefully prove, that the Texas system of financing public schools "fails to provide each child with an opportunity to acquire the basic minimal skills for the enjoyment of the rights of speech and of full participation in the political process." (411 U.S. at 37.)
10. Can we demonstrate the existence of other taxing or financing systems that will avoid or eliminate much of the discrimination we are challenging? (compare 411 U.S. at 41.)
11. Can we demonstrate the correlation (direct if possible) between expenditure for education and the quality of education? Can we describe or identify the "proper goals" of education? (see 411 U.S. at 43.) Could disparities in public school financing be proven to be dysfunctional in relation to these goals?
12. Can we demonstrate that a change in Texas' system of financing public education will not have a directly egregious or radical impact upon the Texas political structure? (see U.S. 411 at 44.) Can we demonstrate, for example, that such radical restructuring has occurred in other states without an egregious impact upon their political structures?
13. If we were to succeed in reforming public school financing in the State of Texas, would a result be higher taxes and lower educational expenditures in urban areas? In other words, could we demonstrate that both urban and rural areas will benefit, and no one (except perhaps dwellers in suburban areas) will suffer?

As was suggested by numerous people at the conference, it will be helpful for these data to be collected and correlated. In conducting your correlations, the data should be collected first with a

> view toward identifying, isolating and correlating those districts with a preponderance of poor people, of minority people, of Chicanos, and of blacks—relative to Anglo and wealthy districts. Next, it is necessary for any empirical or sympathetic surveys you conduct to be fully exhaustive. In addition, it would be most helpful if you could compare the insufficiencies of education in Texas with those found in other states. It would be most helpful if the comparison shows Texas to be especially bad, and you were able somehow to relate the poor state of education in Texas to disparities in financing. Of course, this could prove impossible.
>
> Once you collect these data we could then consider further whether new public school financing litigation should be undertaken in Texas. It might well be better for us to wait until some of the lawsuits that are pending, or are being planned for states other than Texas, are completed. If we can then develop a series of precedents contrary to the *Rodriguez* decision, we may be able to move again in Texas. Until that day, we are faced with two federal court precedents, virtually directly in point, ruling against us in terms of a challenge to the Texas Public School Financing System. It does not, therefore, seem advisable to being a new federal court action very soon; and considering the Texas judiciary, a state court action, in addition to awaiting further collection of data, no such action should be considered until the controlling Texas constitutional language is in fact known.
>
> Thanks again for a fine conference and for your hospitality. I look forward to seeing you again soon.

After several months of TEE study and planning, on October 21, 1974, Robert Brischetto responded to Rosen's letter with the following:

> Since your very thought-provoking letter of July 15, we have conducted a number of analyses in response to your suggestions. (see, primarily, the attached paper: R. Brischetto, "School Finance Reform Through the Courts: The Case for Texas," IDRA staff report, September 30, 1974.) The purpose of this letter is to respond to questions you raised with an eye toward indicating what data are available and what further research might be undertaken to answer some of your questions.
>
> The numbered responses below correspond to the 13 areas of research raised in your letter:
>
> 1. The analysis of where the poor are located is easily done with the census data by school districts currently in our data bank. From preliminary analyses, the suggestion that the poor are "clustered around commercial and industrial areas" is not unequivocally supported. A distinction, of course, must be made between where the poor are found in large *percentages*. The incidence (percentage) of poverty is greater in rural areas and the poor are more likely to be rural than are the non-poor. But since most persons are located in urban areas, so too are the poor.
> 2. The local tax revenue has been obtained district-by-district and included in the analyses of inequalities in Texas (Brischetto, 1974). The question of the effect of municipal overburden has not been addressed, but should be the topic of further research efforts. Any suggestions on how to estimate municipal overburden would be appreciated.
> 3. In order to document absolute deprivation, case studies would have to be done on districts selected on the basis of information we have in our data bank or from cases reputed to be good "horror stories." This is on our agenda of research for this year. The amount of disparity in various educational resources—top to bottom—has already been analyzed. (see: Brischetto, 1974, Table 3, p. 38.)
> 4. Studies of the "Minimum Foundation Program" are also planned. An analysis of the foundation program and how it wealth-discriminates can be found in a paper by Morgan and Brischetto, "How the Texas School Finance System Wealth Discriminates," an IDRA staff paper.[43] We have not yet found an adequate definition of an "adequate program of education." This might be accomplished along with a study of the cost of bilingual-bicultural education which is planned. Any suggestions on this would be appreciated.

5. The "comparative discrimination theory" has strong empirical support from the analyses we have conducted on inequalities in educational resources by district wealth, family income, and ethnic composition of school districts. The Pearson correlation between family income and local revenue per pupil for education is .40; between mean family income and local and state revenue combined it is .34 (Brischetto, 1974, Table 10, p. 57). These correlations are rather sizeable when one considers that they are for all school districts in Texas with at least 300 pupils enrolled and a subsample of districts with percent of persons in families below poverty. It can be safely concluded from these data that the poorer the family, the lower the dollar amount of education received.
6. No, it is not true that "there is a reverse correlation between family income and dollar amount spent on education per student for the middle 90 percent of the Texas school districts." In fact, the opposite is true. If you meant to say, "Is there an inverse correlation between family income and school district wealth?"' the answer is still no, but the correlation depends on which measure of district wealth is used (see: Brischetto, 1974, Table 9, p. 53) and whether or not controls are made for percent rural population. For example, for districts with less than 10 percent rural population, the correlation between mean family income and estimated market value of property per pupil is .44; between income per pupil and market value per pupil, it is .64 (Table 9, p. 53).
7. We have identified the poor in terms of federal poverty guidelines. The comparison with state guidelines has not been done. We will, however, build this into our research agenda.
8. To obtain the correlations between educational level and enjoyment of political rights will require a separate study. The data on enjoyment of political rights is not already available to my knowledge. Your suggestions on the possible indicators of "enjoyment of political rights" would be very much appreciated. It is a study we would very much like to undertake.
9. (same as #8 above) How do we identify the "basic minimal skills" necessary for the enjoyment of the rights of free speech and full participation in the political process?
10. Demonstrating that there are other taxing and financing schemes that avoid the discrimination by ethnicity, income level, and district wealth can be accomplished with computer simulations of ideal-type schemes with the new data we are adding to our data bank. Such simulations are high in priority on our research agenda.
11. We have demonstrated a direct correlation between educational expenditures and quality of educational services as measured in terms of educational inputs such as teachers' degree levels, experience, etc. However, realizing that these are not indicators of educational outcomes, the study of educational achievement might be a possible future project. Records are not kept on achievement by school district at the state level; if they are, they are a well-kept secret because I have asked repeatedly at the Texas Education Agency. Perhaps an interrogatory would force records that are confidential on achievement scores into the open and cause the state to keep records not previously available. I do have some data from a 1972 questionnaire I sent to 200 superintendents in Texas. The responses to the questions on student reading scores, however, were received on only about 50 percent of the districts. In short, the sample cannot be considered representative of Texas districts; but an analysis of some of the relationships between educational expenditures and reading achievement for each ethnic group might be done.
12. The effect of a change in the Texas system of school finance on the political structure would require a separate study, perhaps an opionionaire to legislators. One might also identify cases where wholesale changes have occurred with little political up-

> heaval. We are reluctant, at this time, to send questionnaires to legislators since we are currently still awaiting a ruling on our application for a tax-exempt status.
>
> 13. The effect of different plans for reforming school finance can be determined by computer simulations, as mentioned above. We hope to get into that analysis within the next couple of months.
>
> To the points you made in your letter, I would like to add a couple of suggestions. In regard to the *U.S. v. Texas* case which we discussed at the conference, we have the data needed to supply information on ethnic isolation *between* school districts and between schools *within* districts for all districts and schools in Texas. The between-district segregation data are easily analyzed with the data we now have in our data base. The within-district analyses will require some additional programming, but can be done without much difficulty. If we wish to relate teacher characteristics (ethnicity, salaries, degree levels, experience, etc.) to ethnic composition of schools *within* selected school districts, this will require a bit more difficult programming, but it can be done.
>
> Another possibility for litigation may be the *Fort Worth I.S.D. v Edgar* which I understand is being reconsidered for refiling in a state court. An opinion of the state attorney general has been requested. The case, which was first filed about five years ago, involved a claim by Fort Worth, Dallas, and Houston school districts that the tax assessment system in Texas is inequitable and in violation of both due process and equal protection. These larger urban school districts claim to have been shortchanged on state aid because of the much higher assessment-sales price ratio in these districts than in other districts in the state. The plaintiffs abandoned efforts to get a three-judge federal panel to rule on the suit after waiting for nearly four years. What we have are data on self-reported assessment ratios from three different sources on different tax years (1970, 1971, and 1973). The discrepancy in assessment ratios is one of the biggest embarrassments for the current school finance system in Texas.
>
> Your critique of the enclosed paper would be greatly appreciated. Realize that it is a working draft and any suggestions you make would be very helpful. Thank you again for your continued interest in the possibility of litigation on school finance in Texas. I might add that in comparison with the inequities I have found in analyses of California, Texas comes out smelling like rotten grapefruit.

Other guidelines for Texas litigation were available to TEE. One was from Robert Silverstein of the Lawyers' Committee for Civil Rights Under Law, submitted to R. Stephen Browning, director of the organization, and forwarded to us. In his letter of transmittal, Browning notes, "Dave [Long] and I are convinced that prior to filing new education reform suits, extreme care must be taken, not only with respect to developing viable legal theories, but also with respect to developing and presenting evidence of the inequalities complained of. . . . I am delighted that you are focusing first on the need to develop both a sound factual basis and a solid legal theory . . . , rather than rushing into state court and filing a lawsuit."

In his guidelines, Robert Silverstein presents four alternatives for further litigation: 1) substituting a racial classification for the class of poor plaintiffs, 2) filing in a Texas court on the equal protection clause of the Texas Constitution (after a final determination is made in California's *Serrano v. Priest*), 3) filing in a Texas court on the educational provisions section of the Texas Constitution, and 4) attacking the unequal school district tax bases in an area-wide desegregation suit.

A much more detailed guideline for further litigation was provided by David Long of the Lawyers' Committee for Civil Rights Under Law. This study addressed the dual purpose of a strategy for litigation under the existing constitution as well as a caveat on the constitutional revision process described earlier in this publication. The following is the text of the David Long recommendations submitted to me on July 27, 1973:

> This memorandum analyzes the impact of existing provisions within the Texas Constitution on possible reforms that may be proposed for the funding of elementary and secondary education.
>
> The comments made here are based on three general criteria which are that the Texas Consti-

tution should (a) insure equal educational opportunity for all children, (b) insure that differences among school districts in amounts of taxable wealth available for support of public schools do not affect the quality of educational opportunity, c) insure that the state has sufficient revenue raising power and authority to accomplish criteria (a) and (b). Most of the comments concerning the existing constitutional provisions relate to criterion (c). The accomplishment of criteria (a) and (b) to a great extent, will require new constitutional language.

We have not considered changes to the existing Article I, the Bill of Rights, because it is much more difficult to contemplate the side effects of changing general language in provisions governing equal rights and due process than it is to anticipate the consequences of changes made in the more narrowly drafted provisions respecting education and taxation.

The memorandum is organized in chronological order by the sections of the present Texas Constitution. The key provisions are found in Article VII (education) *infra p 3* and Article VIII (taxation and revenue), *infra p 10.*

Article III, Section 49. State Debts. This provision on its face prohibits debts "created by or on behalf of the state" in excess of an aggregation of $200,000 at any time, except for certain purposes not relevant to education. Because of this provision each time the state needs to borrow funds or issue bonds (except for the narrow categories of section 49), a new constitutional provision must be proposed and voted on. This provision may be a barrier to the state assuming the costs of school construction—at least insofar as state bonds are required. A less cumbersome and restrictive constitutional requirement pertaining to the creation of debts by the state, at least for purposes of school construction, should be proposed for the new constitution.

Article III, Section 56. Local and Special Laws. This section prohibits the legislature from passing local or special laws in certain cases. These cases include "regulating the affairs of . . . school districts"; "regulating the management of public schools, the building or repairing of schoolhouses, and the raising of money for such purposes;" "exempting property from taxation;" "and in all other cases where a general law can be made applicable . . ." This section can be viewed as an equal protection provision pertaining to classification within the enumerated categories. It has not been interpreted by the Texas courts to prohibit classifications within these categories, but rather to impose a requirement that there be a reasonable basis for such classifications. *Cameron County v. Wilson,* 326 S.W. 2nd 162 (Tex. Sup. Ct., 1959). Additionally, Article VII, Section 3 which provides that school districts may be "created by general or special law," appears to exclude decisions made with respect to the creation of school districts from the coverage of section 56.

Section 56 is a common form of equal protection provision in state constitutions. As an equal protection guarantee with respect to education, it is probably not significantly different in its coverage and protection than the equal protection clause of the Fourteenth Amendment to the United States Constitution. Texas appears to have applied essentially the same test in interpreting Section 56 as that used by the United States Supreme Court in interpreting the federal equal protection clause. In some future litigation, plaintiffs may argue that education is "fundamental" under Section 56; however, whether the court would accept this argument would probably not depend on whether the language of Section 56 stays the same or is changed. The critical variable probably will be what the constitution's educational provisions says specifically about the state's responsibility for education. Thus, *there appears to be little reason for tinkering with Article III, Section 56.*

Article VI, Section 3a. Bond Issues; Loans and Credit; Expenditures; Assumptions of Debts; Qualifications of Voters. This section requires that in referenda for issuing bonds for expending money or assuming debts only qualified electors who own taxable property in the political subdivision or district where the election is held shall be qualified to vote in such election. Property qualifications for school district elections have been held unconstitutional by the United States Supreme Court. *Kramer v Union Free District* 395 U.S. 621 (1969) (*Cipriano v. City of Houma,* 395 U.S. 701 (1969); *Phoenix v. Kolodziejski,* 399 U.S. 204 (1970). *Thus, this provision is now without legal effect for school district election and should be modified accordingly or eliminated.*

Article VII: Education

Article VII, Section 1. Support and Maintenance of System of Public Free Schools. While the preamble to Section 1 as it presently stands may, if a Texas court is so inclined, form the basis for finding that education is fundamental, this section has little operative language that could form the basis for a court holding that the Texas' school finance is unconstitutional. The operative language is "it shall be the duty of the legislature of this state to establish and make suitable provision for the support and maintenance of an *efficient* system of public free schools." It is unlikely that a court would seize upon the language "efficient system" to enforce anything. The commentary to this section indicates that "efficient" was suggested by those who preferred an older system of state-subsidized private schools in the hopes that this language would deter the enlargement of state controlled free public schools. Moreover, the concept of efficiency is one of economics connoting the most education for the money; it has little meaning pertaining to the right of children to any particular form, quality or quantity of education. *Thus, this provision should be completely changed.*

Suggested Modification of Article VII

Section 1. Knowledge, self-reliance, and understanding of the democratic process being safeguards of liberty and the bulwark of a free and open government, the State shall ensure that its free public elementary and secondary schools provide an equal educational opportunity with high quality educational programs for every child of school age throughout the state. A fundamental goal of the people of the state is the educational and personal development of all persons to the limits of their capabilities.

Section 1. [Alternate Version] Knowledge, self-reliance, and an understanding of the democratic process being safeguards of liberty and the bulwark of a free and open government, the State shall maintain a system of free public elementary and secondary schools that provide equal educational opportunity with educational programs of high quality for every child of school age throughout the state. (A fundamental goal of the people of the state is the educational and personal development of all persons to the limits of their capabilities.)

Section 2. The standards of quality for public elementary and secondary schools shall be determined and prescribed by the State Board of Education subject to revision only by the legislature. Such standards shall take into account differences in student characteristics.

Section 3. The State shall ensure that the funds are provided to maintain throughout the state an educational program meeting the prescribed standards of quality. No child shall be discriminated against in the provision of educational resources on account of race, religion, color, national origin, sex, personal or school district wealth or place of residence.

Section 4. The State recognizes the distinct cultural heritage of its diverse population, and the public schools shall preserve and enhance this valuable inheritance.

Comments. The basic framework for new Article VII respecting the obligations of the State of Virginia. The proposed provisions are intended to deal with the central problem of existing Section 1 which is that much of its language is merely descriptive of power that the legislature would have even without such a provision. The provisions are designed to impose more specific obligations and limitations on state action and inaction respecting education.

Section 1

Section 1 contains the preamble establishing education's importance and sets out the general obligation of the state to provide free public schools. The first clause of this state descriptive of the importance of education to the state; the last sentence highlights the importance to the individual.

A major problem with most existing state constitutions including the new Virginia Constitution is that the general obligation to support education is framed in terms of providing "for a system of free public elementary and secondary schools." There is state court precedent to the effect that once the legislature has established an educational "system" which provides every child in the state with some education, it has virtually fulfilled its constitutional obligation. Consequently, in both

Section 1 and alternative Section 1 as proposed herein, the state's obligation to support education runs to the school level and to the child. In proposed Section 1, the state shall "ensure that its . . . *schools provide* . . . for every child school age throughout the state." In alternative Section 1 the clause "that provides equal educational opportunity with educational programs of high quality for every child . . ." modifies "schools" and not "system."

The major operative language in Section 1 is designed to impose both limitation and an obligation on the state. The equal educational opportunity requirement imposes a limitation on state power to permit schools to provide children with unequal educational opportunities. The "high quality educational programs" requirement is an obligation, but in the context of the "equal educational opportunity" mandate, it should also be construed as a limitation on state power to permit some districts to offer a high quality education and not others.

The language in alternative Section 1 referring to the public schools within the state as "its . . . schools" is designed to make clear the state's direct obligation to them and to their students. This reference does not prohibit the delegation of authority to school districts. It does help to ensure that the state cannot ignore the central responsibility it must retain even where such delegation occurs.

Section 2

If equal educational opportunity is to be more than an abstract concept, it must be given concrete meaning at least in input terms (and perhaps with reference to outputs). The legislature is not the appropriate body to formulate the specifics of what "an equal educational opportunity with high quality education programs" requires.

Legislative review, however, is certainly appropriate, especially since the legislature has to raise the funds for education. Courts can recognize educational inequality, but they are not equipped to determine what a "high quality" education requires. Thus, the initial obligation to determine and prescribe standards of quality is given to the State Board of Education in proposed Section 2.

The second sentence of Section 2 states that equal educational opportunity does not mean the same educational resources being provided all children regardless of educational need. The term "student characteristics" was selected rather than "student needs" or "educational needs." It includes the concept of need and compensatory education yet it avoids the negative reaction that some people have to the concepts of "need" and "compensatory education."

Section 3

Under proposed Section 3 the state is obligated to fund the standard of education prescribed according to Section 2. Full state funding is not required. But, in the context of other limitations, i.e. to provide an equal educational opportunity and to avoid discrimination based on district wealth, the state has the obligation to raise the funds, either from state or local revenue sources, to provide the required standards of quality being met. Notice, however, that this section is designed to protect only children, and does not require that differences in property tax rates for education be eliminated.

Section 4

This is taken from the Montana Constitution and there was intended to reflect the state's concern for its Indian population. In Texas this would primarily evidence the state's concern for its Mexican-American population.

We see at least *two options with respect to the Permanent School Fund* which would contribute to school finance reform.

First, this provision could be left unchanged and Article VII, Section 5, eliminated or modified to merit allocation of the earnings from the permanent school fund for equalization purposes rather than "according to scholastic population."

The second possibility would be the liquidation of the fund in such a way as to benefit school finance reform. The major problem respecting school finance reform today is the availability of new state revenues to finance it. Maine recently solved this problem in the short run by applying all of the state share of federal revenue sharing to education in order to finance a substantial finance reform package. A constitutional provision liquidating the Perpetual School Fund could be drafted which requires all funds from the liquidation to be used for state aid to education with the condition that the legislature must appropriate funds annually in an amount not less than those appropriated for education in the fiscal year immediately prior to the enactment of the new constitution. Of course, once the fund is liquidated, the legislature will either have to raise additional state revenues or cut back educational funding. But, by that time, a constituency should have developed around increased state support that would prevent the latter course.

Article VII, Section 3. Taxes for Benefit of School; School Districts. I would recommend that this provision be completely eliminated. There is little within it worth salvaging for school finance reform. The provisions of Section 3 are discussed below.

A. The earmarking of revenue from certain taxes for education (state occupation taxes and the poll tax and an authorization to levy a state ad valorem tax in an amount not to exceed $.35 per $100 valuation) does nothing that the legislature could not otherwise do. However, earmarking other taxes for other services does prevent their use for educational purposes when needed. It is impossible to anticipate in the Constitution the amount or kind of tax that should be earmarked that will raise sufficient funds for any particular service in the future. I see no reason to believe that education would fare worse without these earmarked taxes.

B. The section also provides that the earmarked taxes discussed above, together with the available school fund from all other sources, must be sufficient to maintain and support the public schools for a period of not less than six months in each year, and "it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free textbooks for use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient, the deficit may be met by appropriation from the general funds of the state . . ."

The six months of required school funding is clearly out of date. Nine months could be substituted here, however, I doubt whether the constitution is the proper place for specifying the length of the school year. The six month provisions may have been useful in the 19th century when there were schools, especially in the rural areas, that were not able to stay open for six months; however, today I should think that other provisions respecting the state's obligation to support the public schools would be a better way to insure an equal educational opportunity for all children than a statement concerning the number of months for which support must be maintained. I have no strong feeling about retention of a specific provision requiring state funding of the textbooks because Article VII, Section 1 required that public education be free.

C. "The legislation may also provide for the formation of school districts by general laws; and all such school districts may embrace parts of two or more counties, and the legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts for the management and control of such districts, whether such districts are composed of territory wholly within the county or in parts of two or more counties . . ."

This is unnecessary language authorizing the legislature to do what it already has the power to do. The only reason for such authorization might be to place negative limitations on such powers (e.g. with respect to county government) expressed elsewhere in the constitution. Unless the new constitution will contain such limitations this language is unnecessary and would continue the undesirable tradition in Texas of filling the constitution with the legislative minutiae. More importantly, the express constitutional authorization permitting the legislature to delegate financial and policy-making control diminishes the state's obligation respecting public education.

D. "The legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and equipment of school buildings therein; provided that a majority of the qualified property taxpaying voters of the district voting at that election to be held for that purpose, shall vote such tax not to exceed in any one year ($1.00) dollar on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts created by general or special law."

First the power of the legislature to authorize an additional ad valorem tax to be levied by school districts is not necessary, the legislature would have inherent power to do this anyway. However, as discussed above, this authorization also diminishes the legislature's responsibility for ensuring that children receive an appropriate education. Such authorization for local districts to tax, especially if contained in the education provision of the State Constitution will as in *Serrano* negate any inference that the constitution requires the legislature to equalize expenditures between districts based on wealth differences. The clear inference of such a provision is that school districts must sink or swim on the basis of their own taxable wealth.

The referendum requirements should also be eliminated.

The amount spent on a child's education should not, at least as a matter of constitutional law, be dependent on the willingness of taxpayers to pass referenda. If such provisions are continued in the new constitution they will undermine the impact of any new language respecting the state's obligation to provide education.

The limitation specifying that only qualified property tax voters can vote in a school district referendum is unconstitutional for the same reasons set out in Article VI, Section 3a.

Article VII; Section 5. Permanent School Fund; Available School Fund; Use of Funds, Distribution of Available School Funds. This section has resulted in the creation of three separate state funds with constitutional significance for supporting education. First is the Permanent School Fund containing the principle from the land set apart for the benefit of schools. Second is the Available School Fund which contains the interest from the Permanent School Fund and the revenue from the taxes authorized by Article VII, Section 3. The Available School Fund must be distributed according to Section 5 "to the several counties according to their scholastic population." The third fund which consists of revenue from the general fund used for education can be distributed as the legislature chooses. The distinction between the available school fund and other funds was created by the Supreme Court of Texas in 1931 to permit state aid to be given in greater amounts per student to school districts with small tax bases. *Mumme v. Marrs.* 40 S.W. 2nd 31 (Tex. App. Ct. 1931). We have no disagreement with this decision; however, it is unfortunate that the court had to find a way around constitutional *limitation* of Section 5 on the equitable distribution of state funds for education. The limitation must be eliminated and a positive obligation to equalize educational opportunities should be adopted (see Article VII, Section 1). The present restrictions of Article VII concerning the use of the permanent interest from the Permanent School Fund and the earmarked taxes in Section 3, if not eliminated, may prevent a Texas court from ever interpreting the Texas Constitution to require an equitable distribution of educational resources among school districts or children within the state.

Article VII, Section 6. County School Lands; Proceeds of Sales; Investments; Available School Fund. This section restricts state control over lands granted to the county for educational purposes. While the amount of funds contributed annually from the county school land fund is small, the provision stands as a testament to the tradition of local control in Texas. I believe that it would be preferable for this provision to be eliminated. These funds, like those in the Available School Fund are presently distributed on a flat grant basis and contribute to the inequities in educational funding. This is, however, a provision on which a compromise can be made probably without running the risk of serious injury to the interest of educational reform—if a strong state responsibility provision is all included in the new State Constitution.

Reform of educational finance has two major components—equality between children and equality between taxpayers. Our primary focus in this memorandum is in equalizing educational opportunities for school children; however, in Texas equalizing burdens of property taxpayers between school districts would also make a substantial contribution to this educational goal. The following analysis of Article VIII primarily deals with issues of property tax equity. Those provisions which contribute to present taxpayers inequities are identified. The drafting of new provisions to ensure fairness to taxpayers in the funding of public education would require additional analysis.

Article VIII, Section 1. TAXATION AND REVENUE. Equality and Uniformity; Tax in Proportion to Value; Poll Tax; Occupation Taxes; Income Tax; Exemption of Household Furniture. The first sentence of Section 1 reads "taxation shall be equal and uniform." On its face, this would appear to be a useful provision for challenging property tax inequalities between districts with respect to both tax rate differences and assessment abuses and Texas courts have held that the classification of property for differential assessments or tax rates within the jurisdiction levying the tax would be found unconstitutional. *State v. Federal Land Bank of Houston*, 329 S.W. 2nd 847 (Tex. Sup. Ct. Dec. 9, 1959); *Lively v. Missouri K&T Railway Company of Texas*, 102 Tex. 545, 120 S.W. 852 (1909). However, this provision only applies within the jurisdiction levying the tax and imposes no obligation of equality and uniformity between school districts. *Smith v. Davis*, 426 S.W. 2nd 827 (Tex. Sup. Ct. 1968). Thus, under the existing constitution no challenge to inequalities between taxpayers in different school districts is likely to be successful under Article VIII, Section 1.

Furthermore, the Texas courts have placed serious hurdles in the way of enforcing the equality and uniformity provision even in the case of taxpayers who are unequally assessed within the same taxing jurisdiction, e.g. a taxpayer challenge to an assessment of his property at 60 percent of market value whereas the averages assessment ratio in the district is 20 percent. While Texas courts acknowledge the requirement of equality and uniformity within jurisdictions, they require those claiming a violation of this provision to prove the assessment was made fraudulently or as the result of the adoption of an arbitrary or fundamentally erroneous plan or scheme of evaluation. In effect, they require proof that the assessor intended to discriminate against the taxpayer, a showing that is nearly impossible to make. (see *Mayne v. Duncanville Independent School District* 380 S.W. 2nd 682 [Civ. App. 1964])

To overcome the Texas court's restrictive view of judicial review of assessment abuses, an earlier Texas Constitutional Revision Commission in their 1968 report recommended the following addition to Article VIII:

Section 10. Appeals to court

After exhausting administrative remedies, any taxpayer claiming unequal assessment of his property for purposes of ad valorem taxation shall be entitled to petition a court of appropriate jurisdiction for relief to consist of adjustment of such assessed value to an equal and uniform basis with other property in the taxing jurisdiction, taking into consideration the percentage of value used locally for assessment purposes and local practices with respect to exemption of personal property. The obligation of the taxpayer to pay the tax due on such assessment shall not be suspended pending final adjudication of the appeal, provided that such taxpayer shall be entitled to recover any sums paid which may be determined by the court to have been erroneously assessed, together with six percent per annum interest thereon from the date of payment. The legislature may enact laws concerning the exercise of this right but shall not abridge same. This shall be cumulative of other remedies available to taxpayer.

The commission comment on this proposed addition is as follows.

This is a new section. Its purpose is to guarantee to taxpayers the legal right to relief by court action from an unequal and excessive tax assessment with the requirement that the tax due on the assessment attacked be paid and is not suspended while the court action is pending. *Under the present constitution and laws, court review is limited to cases of fraud, want of jurisdiction, illegality or the adoption of an arbitrary and fundamentally erroneous scheme of valuation.* Even if the taxpayer succeeds in having the assessment set aside, the court is not permitted to fix the proper value but must refer the matter back to the local taxing entity making the assessment.

While this proposed new section of the constitution could stand alone and be interpreted by the courts to provide a much-needed remedy that taxpayers do not presently enjoy, its adoption should be followed closely by legislative action to provide a procedural framework for such appeals, including:

1. Fixing the time within which an appeal might be filed.
2. The procedure for payment of the tax under protest and for refund of excess taxes pursuant to the court's judgement.
3. Applicability of the substantial evidence rule.

It is not at all clear that this provision would remedy the evil at which it is directed, but it is a starting point.

Moreover, while Article VIII, Section 1, as interpreted by the Texas court's, affords little protection from assessment discrimination against individual taxpayers, it probably does prevent (a) statutes and ordinances from imposing different tax rates on different classes of property and (b) assessing different classes of property at different percentages of full market value. (see City of *Houston v. Baker* 178 S.W. 2nd 820 [Civ. App. 1915]; *State v. Federal Land Bank of Houston,* 329 S.W. 2nd 847 [Tex. Sup. Ct. 1959] However, in other cases Texas courts have permitted certain classifications of property for tax purposes if there is a reasonable basis for the classification. (see *City of Pasedena v. Houston Endowment Inc.* 438 S.W. 2nd 152 [Civ. App. 1969]) Property classified by whether it was within or outside the city for tax purposes on the basis of whether it is residential, industrial, commercial or rural for the purposes of assessment at different percentages of market value would be of uncertain constitutionality.)

Article VIII, Section 1 specifically authorizes an income tax, but there is uncertainty about whether a graduated income tax would be permitted under the equality and uniformity provisions of that section. In one case the Texas Court of Civil of Appeals referred to the income tax as an excise tax rather than a tax on property, *(Community Public Service Company v. James,* 167 S.W. 2nd 588 [1942]), but since the equality and uniformity requirement is not confined merely to property taxes, a court under that provision might hold a graduated income tax unconstitutional for its lack of equality and uniformity. Indeed, based on similar language in the Pennsylvania Constitution, the Pennsylvania Supreme Court recently struck down an income tax which was graduated only in the sense that it included personal exemptions.

A policy decision should be made concerning what taxes should be required to be uniform and what classifications the constitution should permit. We can then draft a constitutional provision to incorporate these policy choices.

One of the reasons for the abuses in property tax assessments is the prevailing practice in Texas, as in most other states, of assessing at only a small percentage of the property's full market value. As a result even small inequalities between property tax owners are tremendously magnified, because e.g. an error of $1,000 in assessed valuation where property is assessed at 10 percent of market value is the same as a $10,000 error where property is assessed at full market value. It might appear that full value assessment is required by the provision in Article VIII, Section 1, that all property "shall be taxed in proportion to its value, which shall be ascertained as may be provided by law." This is not the case; Texas courts have held that assessment at less than full value complies with the constitution.

Duvall v. Clark 158 S.W. 2nd 565 (Civ. App. 1941). Article VIII, Section 20 which says that "no property of any kind in this state shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value," acts as a built-in deterrent to assessment at or near full market value. This is because the closer you get to full value assessment, the greater likelihood of an individual's property being assessed at slightly above full market value. An assessor that assessed at or about full market value would stand the risk of having his assessment found illegal, not because they were significantly unequal, but because Section 20 prohibits any assessment above full value regardless of the extent of inequality. I would suggest a new constitutional provision be included requiring assessment at full cash market value and letting the constitution's equality and uniformity provision act as the constitutional restraint on unfair assessment.

Another provision of Article VIII, Section 1 authorizes the legislature to levy certain taxes and place certain limitations on them. I have no strong feelings about these since the legislature has inherent authority to levy any of the taxes which this section purports to authorize and the limitations do not appear to affect revenues in any substantial manner—although such limitations are probably more appropriate for legislation than a state constitution.

Article VIII, Section 1a. No State Ad Valorem Tax Levy; County Levy for Roads and Flood Control; Tax Donations. The most important provision of this section for school purposes is the statement that "From and after January 1, 1951, no state ad valorem tax shall be levied upon any property within this state for general revenue purposes." This provision should be read in the context of Article VIII, Section 1e which is found below.

Article VIII Section 1e. Abolition of Ad Valorem Property Tax. This provision phases out the state ad valorem property taxes specified in provisions such as Article VIII, Section 3 (above) which authorize a state ad valorem tax for school and the elimination by Section 1e is for certain institutions such as Article VII, Section 17. The effect of section 1a and 1e is to preclude the state from using a statewide property tax to pay for school finance reform. Furthermore, the other attractive revenue source for financing such reform, the income tax, has never been used in Texas and would require a tremendous political battle to enact. This, coupled with the abolition of state authority to use the property tax, could prevent the reform of school finance in Texas. Such political and constitutional restraints may (a) perpetuate the over-reliance on local property tax for education, the cause of much of the existing inequality in the Texas system; (b) keep the state from ever having sufficient revenues to assume a greater share of the annual cost of education.

Article VIII, Section 11. Place of Assessment; Value of Property Not Rendered by Owner. The portion of this section relevant to school finance reform requires that "all property . . . shall be assessed for taxation, and the taxes paid in the county where situated . . ." This provision together with those of Article VIII, Sections 14, 16, 16a and 18 constitutionally require the state to remain impotent to improve the administration of the property tax in Texas. The consequence of Section 11 and 14 is to constitutionally require that property located in a county must be assessed by the county assessor alone. *Lively v. Missouri K&T Railway Company of Texas,* 102 Tex. 545, 120 S.W. 852 (1909). This means that, even if the state decided to levy a statewide property tax for education, assessments under that tax would have to be made by the county assessors. Great inequalities would result in such a situation if the state does not have a strong and effective equalization mechanism. However, a Florida state court recently held unconstitutional a state equalization procedure through which a state assessment equalization study was used to review and equalize local assessments. The court based its decision on the fact that assessors in Florida are constitutionally established officers—as in Texas. The combination of establishing the county assessor as a constitutional officer and the constitutional requirement that he make the assessment with respect to all property in the county could result in a similar decision in Texas.

Moreover, while Article VIII, Section 18 says that the legislature "shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, . . ." The same provision specifies that "the County Commissioner's Court is to constitute a Board of Equaliza-

> tion." Additionally, Article VIII, Section 20 provides that "the Board of Equalization of any governmental or political subdivision or taxing district within this state [shall not] fix the value of any property for tax purposes at more than its fair cash market value." Notice that in describing the Board of Equalization no mention of a state board is made. All references are to political or governmental subdivisions or taxing districts within the state. A court might infer from this that a state board of equalization is beyond the power of the legislature, under the existing constitution, to establish. Thus, while the constitution anticipates assessment equalization within counties, it could be interpreted to prohibit property assessment equalization throughout the state. And indeed Texas is one of the few states in the country that has no statewide equalization mechanism. Continuation in a new constitution of these provisions relating to property assessments could help to lock Texas into the inequities stemming from local property taxation that exist today.

On the basis of these recommendations from colleagues in the networking legal entities, it was decided that further action in a federal court would not prove productive. The filing of a suit in a state court was deferred until a sufficient data base was available in support of the litigation, and the political climate would be conducive for a successful decision. In spite of continuous preparation, a state school finance case challenging the constitutionality of the existing system was not to be initiated until 1984.

There was some litigation initiated in the meantime under a strategy developed by Mark Yudof of The University of Texas Law School and me. Considering the prevailing legal opinion that further lawsuits on the Texas public school finance system were not feasible in federal courts, Yudof and I conceptualized a strategy under which a series of federal court suits would provide relief for low wealth districts. Specific school programs for the minority and disadvantaged school populations could be made mandatory by a court, and the state could be forced to provide necessary funds for these programs. Thus, the programs would serve as proxies for the much needed funds not being provided by the system. The first program to be addressed in this strategy was bilingual education.

After my contacting LULAC and the American G. I. Forum and obtaining their agreement to sponsor the litigation, Yudof filed the case as a motion to intervene in the ongoing *U.S. v. Texas* desegregation case in Judge William Wayne Justice's court in Tyler, Texas. Lack of funds for pursuing the litigation led us to request that MALDEF take over the case. Litigated by Peter Roos and Albert Kauffman, the case was successful with detailed requirements for a bilingual education program specified by Judge Justice.

As was the case with school finance and other educational reform in Texas, the case was fought viciously by the Texas Education Agency and the Texas attorney general. An appeal was filed by them in the 5th Circuit Court of Appeals in New Orleans, where the case was partly sustained and partly reversed with a remand to the district court for re-trial.

The pressure of the original decision, augmented by recommendations from a Governor's Task Force on Bilingual Education, was sufficient for the Texas Legislature to enact legislation on bilingual education which was almost identical in language to the original district court order and the recommendations from the task force. The similarities in language and content among the court order, the task force recommendations and the Bilingual Education Act were not coincidental since IDRA staff and consultants had made similar contributions to all three. I had been a key MALDEF witness in the federal court litigation, and Dr. Gloria Zamora and Albert Cortez from IDRA, assisted by Joe and Mary Esther Bernal and other bilingual experts, made a strong impact on the task force recommendations and Sen. Carlos Truan's bilingual education bill.

The Texas bilingual legislation made the court case moot, and it was never pursued to a conclusion. The litigation strategy to provide proxies for school finance equity through a series of suits in federal courts did not prove to be a feasible alternative, considering that the process of trial, appeal and remand for the first such case took years without ever reaching a positive conclusion. The strategy was abandoned in favor of a direct challenge to the finance system in a state court.

CONCLUSION

Texans for Excellence (TEE/IDRA) emerged in 1973 as the only entity in the state dedicated exclusively to the reform of the public school finance system. It conducted the necessary research to substantiate the claims

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made earlier by the plaintiffs in *Rodriguez*, provided other entities, including state agencies, with extensive information on the need for reform, prepared and distributed materials in support of its position, and awakened educators, law makers, government officials and the general public to the inequities in the existing system of school finance and their implications on the ability of children to receive equal educational opportunities.

As small gains were made in the acquisition of adequate financial resources for low wealth school districts, it became apparent that there was a need to influence the ultilization of these resources. The acquisition of necessary financial resources for the improvement in educational opportunity needed to be accompanied with the necessary and appropriate changes in the operation of the schools. The exclusive goal of school finance reform was expanded to include the programmatic changes essential to the success of the atypical children commonly found in low wealth districts.

TEE established a substantial network of individuals and organizations in support of a school finance reform movement. During the formative years, some of the best informed educators and the most outstanding legal minds were drawn into the effort to reform the Texas system. This pooling of resources has continued until the present time.

Soon after the initiation of the reform movement, it became apparent that the achievement of an equitable system of school finance was not to be an easy or rapid accomplishment. Promises made during the *Rodriguez* litigation were quickly abandoned as the state education agency and the state attorney general's office joined forces with the high wealth district in a continuous attempt to preserve an elitist system of education in the state. The vested interest of high wealth districts in superior educational opportunity with low local tax effort would continue to be an impediment for educational equity until the present.

The failure of the Texas Legislature to respond to the needs of low wealth districts made litigation an imperative. When such litigation did emerge, its success can be attributed to the years of research and planning which preceded it. (see Chapter 8: "The Edgewood Litigation")

CHAPTER 4

STATE LEGISLATION (1973 TO 1985)

INTRODUCTION

For 12 years, from 1973 to 1985, the Texas Legislature made a feeble and inadequate attempt to remedy the growing disparities in educational resources between low and high wealth districts. This era follows the reversal of *Rodriguez* in the U.S. Supreme Court in 1973, and terminates with the trial of the *Edgewood* case following the disappointing results of House Bill 72 in 1985.

This period differs from the *Rodriguez* era in that advocates attempted to achieve school finance reform without the pressure of the federal courts. In general, it was a period of high frustration as the legislature paid lip service to the promises of the *Rodriguez* era, but consistently failed to bite the bullet in the enactment of reforming legislation. As stated previously, the tradition of an elitist system of education was difficult to overcome, and all legislative efforts resulted in a reformed system in which all of the state's children were equal, but some were more equal than others. The system's main obstacle to equity, unlimited and unequalized local enrichment, remained as the salient characteristic of the system through every legislative reform effort.

There were other characteristics of the era that created increased pressure for reform and would eventually lead advocates to look at the state courts in lieu of legislative inaction. The following are some of the salient characteristics of the 1973 to 1985 legislative era.

- There was continued and increased research into the existing system of school finance and its impact upon educational opportunity in districts of varying wealth. The research agenda initiated by TEE/IDRA immediately following the *Rodriguez* era increased substantially during the legislative period. Under right-to-know legislation and with increased computer capacity, information not available during the federal trial became readily available to reform advocates. The capacity to do computer-based simulations allowed school systems to determine the impact of proposed legislation on varying wealth districts even before the proposal came up in legislative committee hearings.
- Educators, public officials and the general public became more knowledgeable about the financing of schools. Although some members of all three categories still have no inkling of how Texas schools are financed, extensive progress was made in the interpreting, disseminating and understanding of information about the system, as well as proposed changes. Myths and misinformation were systematically addressed, although opponents of reform still use extensive misinformation in organizing opposition to equalization.

  The availability of information brought a quick end to the days when Gov. Dolph Briscoe would receive a five-minute standing ovation upon stating that Texas had the finest system of schools in the country. (see Cárdenas, José A., "TABS and the Emperor's New Clothes," *Multicultural Education: A Generation of Advocacy*)[10] The performance of Texas schoolchildren on the Texas Assessment of Basic Skills test (TABS) and subsequently on the TEAMS, TASS, ACT, SAT and all other measures, belied anybody's contention that one of the finest attributes of this state is its educational system.

  IDRA consistently disseminated comparisons of Texas' financial effort in support of the schools. According to IDRA *Newsletter* articles, Texas ranked 40th in the country with $778 in per pupil expenditures for the 1972–73 school year, compared to 1st ranking New York State with

$1,584. By the 1980–81 school year, Texas had moved up to 39th place, but by 1982–83, on the eve of the *Edgewood* litigation, it had slipped to 43rd.

Taxation became as much a school finance issue as the equitable distribution of funds. This era saw the birth, growth and entrenchment of a nationwide taxpayers revolt which eliminated more taxes and more money as an alternative solution for low wealth district inadequacies. The use of a lack of state funds as an excuse for the failure of Texas to provide school equalization was ironic in that no equalization was provided when plentiful surplus funds were available. At the end of the 1980–81 fiscal year, Texas had a cash surplus of $2.86 billion, and projections for the end of the biennium estimated a cash surplus of $6 billion. Yet, most this surplus was spent on improvement to Texas' highways, with little of the surplus allocated to education.

IDRA created a school finance subdivision, the Property Tax Project, whose special goal was property tax equity. Under Craig Foster, the Property Tax Project became the state's leading advocate for tax reform from its inception in 1975 through 1982 when, under IDRA sponsorship, it became an independent entity, and it continues its advocacy as the Austin-based Equity Center. (see Chapter 6, "Property Tax Equity")

- Since the Texas Legislature meets only every other year (on odd-numbered years), odd-numbered years became periods of inadequate legislative action with an inevitable appointment of a study group to provide guidance for the next session of the legislature. Therefore, even-numbered years were usually dedicated to studies of the finance system and the development of legislative alternatives by study groups, legislative committees and governor-appointed commissions. Due to 20 years of these cycles of legislative inaction followed by year-long studies, low wealth school districts sang the consistent state jingle, "Relief is just two years away."
- Recommendations by the various study groups inevitably led to strong recommendations for a more equitable system of school finance. During the legislative process, the strong recommendations were watered down, and little equity was achieved. Measures for increased equity inevitably came out of the legislative process with a "hold harmless" provision which stipulated that the potential equity would be constrained by an additional provision that no district would receive less funding than it was receiving before the new measure was enacted.

Although considerable funds were allocated for addressing the general inadequacies of the system, few of these new funds filtered down as equalization funding for the low wealth districts. The failure to address local enrichment as the basic cause of disparities led to a quick erosion of the small amount of equalization funding. It became a common occurrence that by the time a new session of the legislature met, equity measures of the previous legislature had been so completely eroded that disparities between low and high wealth districts were greater than before the prior legislation had been enacted. By 1985 the resultant situation was very appropriately described by the trial judge as "a cat chasing its own tail."

The costs of education increased so dramatically that neither the advocates of "equity regardless of level of funding," nor the advocates of "higher levels of funding regardless of equity" could be satisfied.

- As the Texas Legislature grappled with the problem of bringing Texas' schools into the 20th century, schools across the country were already preparing for the 21st century. The state and national economic bases changed from the traditional agriculture, minerals and industry into information and services with a heavy dependence on high technology. The menial jobs awaiting the plentiful failures of the Texas educational system simply disappeared, some taken over by robotics and other technologies, others exported to the under-developed countries where cheap labor cost only a fraction of what it cost in the United States. The technological revolution led to a demand for skilled labor that Texas schools were incapable of providing.
- Advocacy for school finance reform was accompanied by increased advocacy in other areas of education. IDRA as an advocacy organization became extensively involved in multicultural and bilingual education, pre-school programs, standardized testing, accountability, race/ethnic and gender equity, children of undocumented aliens, mental health, retentions in grade and other is-

sues which were dependent on a much improved and adequate system of school finance. (see José A. Cárdenas, *Multicultural Education: A Generation of Advocacy,* Simon and Schuster, 1995)

As a result of this movement toward program equity, the traditional tug-of-war for funds between the increasing costs of traditional education and the financial demands of equity became a three dimensional competition for the education dollar.

1973: THE 63RD LEGISLATURE

The 63rd Legislature convened in January 1973 facing a federal court mandate for the enactment of an equitable system of school finance. Very little activity on school finance was undertaken early in the session, pending a Supreme Court ruling on the state's appeal of the lower court's finding. On March 21, 1973, the legislature breathed a collective sigh of relief upon learning that the *Rodriguez* decision had been overturned by the higher court. The tremendous pressure exerted by the lower court's ruling on *Rodriguez* disappeared immediately with the Supreme Court's reversal.

The efforts of the 63rd Legislature toward equalization are described in the first publication of the newly incorporated Texans for Educational Excellence (TEE), the May 1973 issue of the TEE *Newsletter.*[44]

In the 1973 63rd Session of the Texas Legislature, Rep. Kubiak introduced House Bills 1255, 1256 and 1257 which were subsequently merged with House Bill 946 by Rep. Hale which represented the Texas State Teachers Association's plan for funding the schools. In the Senate, Oscar Mauzy submitted Senate Bill 971 which provided a 10 percent limit on enrichment funding and incorporated the equalization funding which Gov. Dolph Briscoe had promised the participants of the 1973 PLEE March on Austin. Excerpts from an article in the first issue of the TEE *Newsletter* in May 1973 provide a description of the proposed legislation and an analysis of the potential impact on equalization.

> The number of bills concerning school fiscal reform introduced during the current session of the Texas Legislature has been small. The tremendous pressure exerted by the lower court's ruling on *Rodriguez* diminished considerably with the Supreme Court's reversal.
>
> The Texas State Teachers Association plan which was presented during the December 1972 TEE conference, and which failed to respond to the "no wealth discrimination" feature of *Rodriguez,* was introduced by Rep. Hale. Although the plan is still endorsed and backed by TSTA, Gov. Briscoe's "no new tax" commitment, and the endorsement of this commitment by many legislators, indicates little possibility of passage.
>
> The plan developed for the Texas State Board of Education and presented during the December TEE conference, also failed to respond to the concept of fiscal neutrality. Subsequent to this, it was presented to the State Board of Education and greatly modified. The general concept is reflected in Rep. Kubiak's HB 1256. This bill incorporates the concept of "leeway funds" above a $300 per student foundation. Leeway funds at two different levels allow school districts to pre-determine a per pupil expenditure level up to $300 above the minimum, with a uniform tax rate throughout the state. The difference between the funds collected by the lowest district and the cost of the program is to be provided by the state.
>
> Although this bill provides only limited equalization, it is a far step from the original plan developed for the Texas State Board of Education. To a limited extent, it neutralizes local tax wealth in that it equalizes local wealth up to $600 per pupil expenditures. Although initially well received, subsequent estimates of the cost of the implementation of this plan, with $800 million in new revenues by 1977, have led to a lack of support. Subsequent revisions have been made for a six-year implementation plan at a cost of $594 million through 1978–79.
>
> House Bills 1255, 1256 and 1257 by Rep. Kubiak have been incorporated into Rep. Hale's HB 946. Chances of passage of the resulting merger are 50-50 at best.
>
> Gov. Briscoe indicated opposition to all versions of Rep. Kubiak's bill due to the increased cost. During the PLEE march to Austin on May 2, the governor unveiled a plan of his own. He presented the plan as an emergency assistance bill for the 1974–75 school year. In the governor's plan, Rep. Ku-

> biak's equalization concept is reduced to $100 above a minimum of $300 in per pupil expenditure, and is applicable only to the lowest wealth districts enrolling 25 percent of the children in the state.
>
> This plan is only a small beginning as compared to the amount of equalization necessary for a reform of the state's school finance plan. It provides no additional funds to impoverished school districts during the coming 1973–74 school year; it provides equalization only up to $400 in per pupil expenditures and it affects only 25 percent of the children in Texas, or 113 school districts out of almost 1,200 in the state. However, Gov. Briscoe repeatedly stated to PLEE participants that his plan was an emergency measure and that a state fiscal reform plan would be prepared for the 1975 session of the legislature.
>
> Participants in the December TEE conference responded positively to Sen. Mauzy's plan for school finance reform. Introduced by Sen. Mauzy as SB 971, it differs from Rep. Kubiak's bill in that it imposes a 10 percent limit on enrichment funds.
>
> Sen. Mauzy and Rep. Kubiak have submitted bills to change the determinant of local ability from the complicated economic index to market value. This change can do two things: (1) limit the unnecessary complexities for the determination of local share, and (2) provide a platform for subsequent equalization efforts, although in itself it cannot be classified as an equalization effort.

The outcome of the proposed legislation in the 63rd session is reported in the June 1973 issue of the TEE *Newsletter:*[45]

> The 63rd Legislature adjourned its regular session on May 28, leaving the state's public school finance crisis unresolved.
>
> In the final hours of the session, House lawmakers declined to adopt a conference committee compromise between Rep. Dan Kubiak supported HB 946 and Gov. Briscoe's plan, which had been introduced in the Senate as SB 971.
>
> The compromise measure's defeat, by a dramatic unbroken tie, was strongly favored by House leaders who are proponents of school fiscal reform. Rep. Bob Vale of San Antonio, said, "This report that comes out of the conference committee does nothing to address itself to the *Rodriguez* decision."
>
> Since the close of session, an ongoing debate has developed as to what might be the best approach to the unresolved problem.
>
> According to some legislative leaders, among them House Speaker Price Daniels, Jr., and Rep. Kubiak, a special session of the legislature is needed to deal strictly with public school finance.
>
> Gov. Briscoe has repeatedly opposed the idea of a special session. Instead, he has requested that the Texas Education Agency further study school finance requirements and weigh the effectiveness of the present system. The governor has said he will submit the problem along with recommendations for solution to the 1975 legislature.
>
> Rep. Kubiak has responded by saying, "We cannot wait two more years. I do not relish a special session any more than does the governor, but a special session is exactly what the crisis demands."

Sen. Mauzy and Rep. Kubiak's proposals to change the determinant of local ability to support education from the complicated economic index to market value of taxable property in order to simplify the equalization process were similarly defeated. The defeat of this measure was seen by many as a bigger loss than other reform measures. TEE took strong exception to this conclusion. Although TEE supported the change as a simplification of the determination of local ability to support education, in itself, the measure provided no equalization. Many legislators took the position that the disparities in school funds were attributed to the measure and directed their efforts in school finance reform to the change in the determination of local ability. This red herring was to continue for several years in spite of repeated TEE/IDRA arguments that poor school districts would remain poor, regardless of the yardstick used to measure their poverty.

Thus, the first legislature to consider school finance reform in Texas set a pattern that was to continue for more than 20 years:

- The legislative session began with high hopes for addressing fiscal inequities on the basis of extensive study and recommendations.

- The legislature got bogged down as different factions favored and opposed specific provisions for producing an equitable system.
- Legislators found a red herring to attack, rather than addressing local enrichment as the cause of the problem.
- The legislative impasse led to little or no legislation which addressed the equity issue.
- In spite of a failure to enact any school finance legislation, the legislature enacted other legislation which increased the local cost of education without additional state funds in support of the new legislation.
- The failure of the state to act on school finance reform was immediately followed by an initiative for further study and recommendations.

Following the failure of the legislature to enact school finance legislation, the plight of all but the richest school systems worsened. New state legislation increased the cost of education, homestead tax exemptions for senior citizens reduced local tax rolls, the U.S. Congress eliminated funds for impact aid, and inflation diminished the value of local bond revenues and reserve funds.

The September 1973 issue of the TEE *Newsletter* lists the various changes which exacerbated a need for school finance reform.[46] It provides an insight into the impact of the legislature's response to various lobbies at the expense of the public schools.

> In the past, Texans for Educational Excellence has highlighted problems in Texas public school finance stemming from inequities in the distribution system, inequities in the revenue raising scheme, percentage of state and local shares, and the unique problem of low tax wealth school districts.
>
> This year, in addition to problems previously described, the public schools of Texas are facing a new crisis in public school finance resulting from federal cutbacks, inflation, and the creation of the new state programs that require additional money.
>
> *Federal Cutbacks* Because military installations are exempt from paying local property taxes yet still send students to local schools, the government provides federal impacted aid (PI 874) to help offset the cost of educating federally connected children.
>
> However, Congressional opposition to continuance of federal impacted aid and President Nixon's impoundment of a large portion of the funds, has left school administrators unable to budget with any certainty.
>
> In addition to PL 874, the government has also scheduled cutbacks in a variety of other federal programs. Although the amount cannot be calculated this early in the 1973–74 school year, almost all school districts are reported to be anticipating cuts in one federal program or another.
>
> *Exemptions* The 1971 session of the legislature provided for homestead exemptions from school taxes for property holders over 65 years of age, and this has resulted in reduced tax revenues in many school districts. Although all school districts have not enacted such exemption policies, it is expected that many school districts will implement the exemption system this year.
>
> *New Legislation* While school districts are experiencing a loss of funds due to exemptions and cutbacks in federal programs, new legislation is creating an increased demand for money.
>
> The liability exemption status of school districts has been greatly curtailed in the past few sessions of the legislature. As a result, school districts are seeking liability insurance not required in the past. Other types of insurance premiums have increased over the years, accompanied by deductible provisions up to $20,000. Thus, school districts must buy more insurance at higher costs and absorb all losses up to $20,000.
>
> The 1973 session of the legislature ordered mandatory workmen's compensation for school employees. Every school district in the state must acquire a policy on the effective date and maintain an annual policy thereafter. A proposed new federal minimum wage law may also have further cost implications for school districts.
>
> Another new mandate of the 1973 Legislature requires all school districts to implement a kindergarten program beginning with the 1973–74 school year, instead of phasing in the program over an extended period as originally planned.

Inflation An additional problem faced by school districts is the result of inflation. According to the U.S. Department of Commerce, the cost of living increased 5.7 percent in the last 12 months. Construction costs have soared to the point that school districts which voted bond issues in the last few years have seen the purchasing power of the bond sale revenues diminish to a percentage of the original sale.

In order to ascertain the amount of new funds needed by the public schools, Texans for Educational Excellence surveyed 12 school districts in metropolitan San Antonio.

Loss of PL 874 funds have been estimated at $4,681,076 by the school districts sampled. Considering that the combined school districts have a combined average daily attendance of 199,665, the loss of 874 funds will average $23.44 per pupil. This amount may be further increased when one considers that 874 funds, being non-categorical and mixed with local revenues, were frequently utilized as matching funds for the acquisition of additional money from other programs.

Only a few school districts had calculated the cost in local revenues for kindergarten programs in 1973–74. Using proportionate figures based on the limited reports, it is conservatively estimated that the new kindergarten program will cost almost $2,000,000 in new local funds.

At the time the data were being gathered, school districts were just receiving bids on workmen's compensation. Based on the bids received, TEE calculated that workmen's compensation will cost each school district an average of $3.50 per year, per pupil in average daily attendance. At this rate, it is estimated that annual policies for workmen's compensation will necessitate $698,970 in new monies.

A 5.7 percent increase in the cost of living during the last year will mean an increased expenditure by the 12 school districts in San Antonio of $6,698,080 for the present school year.

The total amount of new funds needed totaled $14,064,349, or $70.44 per pupil in average daily attendance.

Implications The State of Texas has followed through on its commitment of no new state taxes for the biennium 1973–74. It is inconceivable that at the time this commitment was made to the electorate, members of the executive and legislative branches could foresee the developing crisis. Yet in spite of many requests for a special session of the legislature in order to respond to the crisis, it appears that no action will be taken until January of 1975. It can therefore be assumed that for the next two school years, the schools may expect no assistance from the state in dealing with the new crisis.

SCHOOL FACILITIES FUNDING

One of the most amazing features of the Texas system of school finance is the complete absence of state funds for school facilities during most of the existence of the school system. In recent years, small amounts of state money have been allocated for school construction, but these amounts have been limited and separate one-time appropriations, not a part of the system.

During the existence of the Republic of Texas and the early years of statehood, the absence of state funds for capital outlay was not extraordinary. Early legislation provided requirements for education without any funding for any aspect of the educational program. The inability, or unwillingness, of the local level to provide funds for education led to the state assuming a part of the cost. Under the Gilmer-Aiken legislation of 1949, the state assumed a substantial portion of the cost of education but excluded funds for school facilities, requiring that these facilities be provided at local expense.

The absence of state funds for facilities created problems for local school districts. Yet, the extent of the problems was rather limited in that the necessary facilities were simple, the cost of construction was relatively inexpensive, and money could be borrowed at very low interest rates. The onset of the industrial revolution initiated increased demand on the schools, with a need for a diversity in programs, services and subjects requiring extensive and expensive facilities. The advent of the technological revolution has caused an exponential increase in the cost of school facilities.

In our elitist system of education, disparities in facilities are much more evident than disparities in educational programs. The many years of state level neglect, followed by several years of state level inadequacy, can be seen much more readily in the tangible facilities than in the relatively intangible instructional program.

Since its inception, TEE/IDRA advocated state funds for school facilities. Every call for the reform of the school finance system has included the provision of state funds for facilities. In addition, state-supported school facilities have been specifically targeted in the advocacy effort.

The August 1973 issue of the TEE *Newsletter* carried an article calling for some state provision for financing local school construction costs and other necessary capital outlay expenditures.[47] The article points out various ways in which funds can be provided and lists the various states using each of the alternatives. At the time, Texas was one of 20 states which had no state provision for school facilities. One state (Maryland) provided for all of the costs of facilities. Three states (Alabama, Kentucky and New York) provided for school construction in the state basic fund distribution program. Five states (Arkansas, California, Indiana, North Dakota and Wyoming) provided a revolving loan fund for school construction. Twenty-six states provided some assistance in the form of state grants.

The 1973 article provides a table of the various states, the amount of state funds for school facilities and the percentage of state education funds allocated for facilities. Unfortunately, Texas is one of the 20 states not included in the table since no state funds were expended for facilities.

Since no one else in the state seemed to be pushing for the state funding of school facilities, TEE developed a basic plan which could be utilized in Texas to provide facilities funds to needy school districts. An outline of the plan was disseminated in the October 1973 issue of the TEE *Newsletter:*[48]

> The following is the basic outline of a plan which could be utilized in Texas to provide construction assistance funds to needy school districts.
>
> **I. Existing State Construction Assistance**
>
> State assistance for providing educational facilities in public schools is not an innovative idea. Thirty of the 50 states are currently providing some form of assistance to local school districts for construction purposes. Assistance is provided in a variety of ways. the following five categories are being utilized in the provision of facilities:
>
> A. State support is provided in the basic state share distribution system (3 states).
> B. Provision of a state revolving loan fund (5 states).
> C. Total state financing (1 state).
> D. Some form of categorical grant (26 states).
> E. No state assistance (20 states).
>
> **II. Plan for State Aid for School Facilities in Texas**
>
> A. *Rationale* It seems unlikely that Texas will continue to hold school districts responsible for providing school facilities entirely at local expense. The following reasons support a new plan for providing state aid:
>
> 1. Education is a state function. It seems unreasonable that the state continue to shirk its responsibility by delegating all the burden of providing facilities to the local school district. The history of having the state concentrate on instruction and not construction is no longer feasible. A highly technological society demands the development of many skills requiring sophisticated facilities and equipment beyond the means of many school districts.
> 2. It is doubtful that the present system of non-state participation would be found constitutional in a court case. The complete absence of state aid eliminates the gray area which the Supreme Court found in the *Rodriguez* case. A similar suit directed toward construction costs, or suits similar to *Serrano* in California, *Caldwell* in Kansas, or *Robinson* in New Jersey, would probably result in a finding in favor of the plaintiffs, placing Texas in the embarrassing and troublesome position experienced between

December 1971 and March 1973, while under the federal western district of Texas *Rodriguez* court order.

3. The ad valorem tax is too narrow a base to continue supporting the cost of school construction. State assistance drawing upon broad-based sources of revenue must provide relief, at least to the low wealth school districts unable to support a program of school construction.
4. The cost of constructing school facilities is increasing at a faster rate than the taxing ability of school districts. Not only is inflation, particularly in the building industry, increasing construction costs, but modern curriculum offerings are requiring more expensive facilities and equipment.
5. The bonded indebtedness of local school districts is growing at a rapid and alarming rate. In August 1972 the total bonded indebtedness of Texas school districts was $2,300,000. In 1971–72 the amount of bonds sold was more than twice the value of bonds retired.
6. Many students in Texas are attending schools without adequate facilities for housing them. During the past few years, some school districts have been forced into split or double sessions in order to house all their students.

III. High Priority Needs for School Facilities Assistance

A. Consolidation Incentive

In spite of the consolidation brought about through the Gilmer-Aiken legislation, the Texas is still plagued with an excessive number of school districts. There are now 1,149 school districts in the state. Of these, two-thirds have less than 1,000 students in average daily attendance. (School administration experts describe an ideal sized school district as one with approximately 25,000 students.)

Extremely small school districts present two basic problems.

First, the small number of students in each grade level prohibits a variety of curricular content. This phenomenon creates the greatest problems in secondary schools, where subjects such as physics, chemistry, geometry, and other electives cannot be offered due to limited enrollment.

Second, the cost of operation of a small school district becomes prohibitive. A physics class for three students costs almost as much as a similar class for 20 students. The basic overhead costs for operation of a small school district are about the same as for a larger one. Each small school district has a superintendent, tax-assessor and collector, secretarial and clerical personnel. It is no wonder, then, that per pupil expenditures in some of Texas' smallest districts soar to fantastic levels such as $7332, or more than 10 times the state average.

An investment of state funds in construction grants as an incentive to consolidation will pay high dividends in a limited number of years. Not only will the state gain in human resource development, but the savings from duplication of services will rapidly compensate for the investment. Savings from top administrative costs will equal the investment in less than a three year period.

B. Low Wealth, High Effort School Districts

The failure of the State of Texas to provide assistance in the construction and equipping of school facilities does not create an equal burden on all school districts. School districts with high tax bases have been able to provide adequate facilities with a minimum of tax effort. On the other hand, school districts with low tax bases have been unable to provide even basic facilities, regardless of the effort they have made in the past.

For this reason, one of the most urgent needs in public school finance is the establishment of a state assistance program that will provide facilities grants for those school districts which have the least ability to pay for construction costs, in spite of high past efforts.

IV. School District Participation

A. Consolidation Incentive

The consolidation of two or more school districts, at least one of which had less than one thousand (1,000) average daily membership—during the immediately past school year, would result in a school facilities grant from the state to the newly created school district of fifty-thousand dollars ($50,000) times the number of original school districts with an average daily membership of less than one thousand (1,000).

B. Grant to Low Wealth, High Effort Districts

School facilities grants would be awarded to school districts meeting both low wealth and high effort criteria.

1. *Low Wealth* Low wealth would be determined by the market value of taxable property in the district divided by the average daily membership for that district (MV / ADM).

   Approximately 16 percent of the school districts in the state could be designated by some standard as low wealth districts. TEE is in the process of developing a sound statistical criterion for judging low wealth.
2. *High Effort* Eligibility for state facilities grants would be limited to the approximately 16 percent of school districts with
   a. The highest bonded indebtedness tax rate and,
   b. The highest percentage of bonded indebtedness to total market value.
3. *Grants* Each school district meeting the low wealth criterion and the two high effort criteria would receive a state grant of 50 dollars ($50.00) times the average daily membership for the immediately past school year.

C. School District Participation

1. A school district could receive school facilities funds as a consolidation incentive and as a low wealth, high effort district if it meets the necessary criteria for participation in both programs.
2. School districts would be eligible to receive grants under each category once during a legislative biennium.
3. School facilities funds would be expended solely for the construction and / or equipping of school facilities related to the instructional program, or in direct support of the instructional program. Facilities for the support of co-curricular activities in which active participation is limited to a minority of the students could not be constructed with state school facilities funds.

D. Texas Education Agency Monitoring

1. The State Board of Education would develop a plan for determining qualifications for participation and the distribution of funds by the Texas Education Agency to eligible school districts.
2. The Texas Education Agency would be responsible for determining that plans and specifications for construction accompanying applications for participation meet sound administrative and construction criteria.

V. Estimates of Participation and Cost

A. Consolidation in School Districts

There are approximately 800 school districts eligible for participation in this program. (see Table 1) In general, the more extensive the participation in this program, the larger the savings to the State of Texas. However, there is doubt that 5 percent of the eligible school districts would participate. The cost to the state of 5 percent participation would be $2,000,000 over a two-year period.

B. Low Wealth, High Effort Districts

1. Approximately 16 percent of the school districts in the state (184 districts) meet at

least one of the three criteria specified. An analysis is being conducted to determine the number of school districts which meet all three criteria and are therefore eligible for participation.

2. It is estimated that approximately 4 percent of the school districts (46 districts) will meet all three criteria. If this estimate proves to be true, the cost to the State of Texas for a two year period will be approximately $5,000,000.

VI. Source of Funding

A. *General Revenues* Funds to be provided to school districts under this program could easily be made available from general state revenues. An increase in the amount of state participation may require the identification of an additional source of funds for the program.

B. *Excess Funds* Excess funds now available to the State of Texas are sufficient to take care of the needs of this program.

C. *Available School Fund* The available school funds can be utilized for continued support of this program. There are several advantages to taking some of the categorical revenue sources for the available school fund and reallocating them to the school facilities program.

As stated in Chapter 1, the plan was modified by Camila Bordie and me and introduced in 1979 as Senate Bill 226 by Bob Vale of San Antonio. The section on consolidation was minimized, and an entitlement distribution formula was developed based on the low wealth and high effort criteria, with the insertion of an additional criterion—high growth.

In spite of the promise of state facilities funds for low wealth school districts, districts with high bonded indebtedness, and districts with fast growing student enrollments, no support was given by school personnel or legislators, and the proposed legislation died in committee.

TEE/IDRA advocacy for the state funding of school facilities surfaced repeatedly during the reform years. In December 1976 the IDRA *Newsletter* published an article by staff member Albert Cortez, again calling attention to the inequities caused by the absence of state funds.[49] By 1976 Texas was one of 17 states not providing state assistance in this aspect of educational need. Cortez restated local need for assistance, the unfairness of the system, and presented IDRA research for documentation and emphasis.

IDRA had conducted a study based on a 15 percent sampling of the richest and 15 percent of the poorest districts in the state. The study showed that the poor districts had an average effective tax rate for construction debt that was more than three times the tax rate of the wealthiest districts—$0.26 per $100 valuation compared to $0.07 for the wealth districts. In spite of the high tax rates of low wealth districts, the revenue yield was almost four times higher for the high wealth districts, $218.90 per student as compared to $58.53 for the low wealth districts. Similar disproportionate revenues for operation of the schools in the high wealth districts allowed for school construction to be financed from operation revenues, leading to one-half of the wealthiest districts having no bonded indebtedness.

A similar article by Leo Zuñiga in the October 1977 issue of the IDRA *Newsletter* pointed out that 35 states now provided facilities funding, with Texas still in the diminishing minority of 15 states without state assistance.[50] Zuñiga points out that "Even in Texas there are precedents for state aid in school construction, for the State of Texas has been building educational facilities for colleges and universities for many decades." Zuñiga concludes with the opinion that ". . . the state, by totally neglecting the needs of school districts in the area of school construction, could be violating official state policy which dictates that '. . . public education is a state responsibility.'"

In 1980 Albert Cortez and Robert Ramirez conducted another IDRA study on school construction needs. By then, the cost of school facilities was increasing by 12 percent per year and school bond issues went begging for takers, even at 10 percent interest rates.

Since the 1973 reversal of *Rodriguez,* I had favored filing litigation based on the absence of equalizing state construction funds. I felt strongly that the complete absence of any form of state assistance in this area constituted the absolute deprivation which the Supreme Court had failed to find in the Texas system of school finance. Legal counsel disagreed with me, pointing out that some amount of local funds could be raised for school construction, even though the limitations on local wealth insured the inadequacy of the effort.

Facilities funding did constitute an important aspect of the *Edgewood* litigation in the state courts, but even after the apparent victory in this litigation, little state facilities funding is available to low wealth districts in the state.

1975: THE 64TH LEGISLATURE

Following the adjournment of the 63rd Legislature and its failure to enact school reform legislation by just one vote, it was generally anticipated that the governor would call a special session of the legislature. This was not to be. The 1½ year interim was to be dedicated to studies of the finance system and the drafting of recommendations.

Gov. Briscoe employed Dr. Richard Hooker, a widely known and respected expert in school finance, as head of the Governor's Office of Educational Research and Planning (OERP). Hooker was responsible for conducting studies and making recommendations to the 64th Legislature.

Several years previous to this, I had worked with an Aspira of New York affiliate in New Jersey in the drafting of recommendations for school finance reform to the court, following the finding of the New Jersey system as unconstitutional in *Robinson v. Cahill.* New Jersey attempted to reform the entire system starting with a definition of education, defining the purposes of education, the design of appropriate curriculum and methodology and a drastic revision in the system of finance. I expressed severe reservations about this approach to school finance reform on the grounds that the entire reform effort would become bogged down in philosophical questions which had not been close to resolution in the past 4,000 years. I strongly suggested that the group take a much more pragmatic approach and focus on the equitable funding of the system. Regardless of the purposes of education, all of the children of New Jersey were entitled to equal opportunity to achieve these purposes. As expected, the philosophical issues led to such a quagmire of "thorough and efficient" issues in the New Jersey litigation that the effort was eventually abandoned in favor of an alternative case.

A similar situation soon developed in Texas. Rather than focusing on the fiscal disparities in the finance system, the studies in preparation for the 64th Legislature in 1975 undertook a study of basic and peripheral issues, which would distract from the basic issue of fiscal equity legislation until the court intervention more than 10 years later.

OERP initiated an extensive study of school accountability. In the history of Texas education, extensive amounts of state funding had been expended in support of the elitist system, with little concern for local accountability. The concept of providing adequate and equitable funding for children in low wealth districts immediately brought up the question of accountability and guarantees that the money would be well spent. The increased concern in accountability was mostly due to the traditional myth that the inadequacies of low wealth schools were attributed to poor administrative and educational practice, rather than to the deprivation of financial resources. We did not argue against the concept of accountability; we argued against accountability being tied to equitable funding.

A second question addressed by OERP was, "What are the school facilities needs in Texas?" At face value, the inclusion of this research question seems highly appropriate. In retrospect, the legislature has not seen fit to provide for the facilities needs of low wealth school districts, even under court orders to do so, so the question of need has become moot.

Politically, the study of facilities needs became absurd. OERP commissioned a study of school facilities in Texas for the governor's office. The study was conducted by expert professors of educational administration. The findings of the experts were so embarrassing and created such a legal liability for the state that the study was never released by the governor.

Another study by OERP addressed the differences between basic and quality education. The assumption made in the study, and still widely accepted, is that students in low wealth districts are entitled to a basic education, while students in affluent districts are entitled to a quality education. Unfortunately, a good basic education is commonly defined as the development of reading and writing skills, behaving properly and learning to follow orders. A quality education consists of the higher order thinking skills, with a strong emphasis on creativity and problem solving. This distinction in curriculum content was dramatically demonstrated when higher order thinking skills were added as test items in the state-administered Texas Assessment of Academic Achievement. Such a distinction in curriculum content allows education to perpetuate existing class and economic differences in our democratic society, a goal which our educational system has been relentlessly pursuing throughout its history, in spite of the economic and social changes in the state, the nation and the world.

Other OERP studies proved more useful. These included a study of cost differentials between rural and urban districts, school staffing patterns, a role of a cost of living index in a school finance program, and weights to be assigned to students with unique and special needs.

While OERP was conducting its studies, the Senate Education Committee of the Texas Legislature established a set of principles that should be used in the new school finance plan to be addressed in the 1975 session. The Committee came up with the following eleven principles which, if followed by the legislature, would have produced an ideal and equitable system of school finance:

1. Formulas for allocating funds to school districts should recognize cost differentials between educational programs at different grade levels and for special educational needs. (weighted pupil distribution)
2. Funds should be allocated on the basis of the number of full-time equivalent students enrolled in specific educational programs.
3. Local administrators should be given the maximum possible flexibility in developing programs and staffing patterns to suit the needs of the individual district.
4. Standards for quality educational programs should be maintained through accreditation procedures rather than through fund allocation formulas.
5. A needs assessment and evaluation program should be initiated to insure that needs are recognized and that programs are effectively meeting those needs.
6. An accounting system which relates expenditures to program categories should be utilized to insure that specific programs are adequately funded.
7. Allocations for transportation should be increased and the formulas revised to more realistically meet the needs of urban areas.
8. The revised foundation school program should insure sufficient funds for a comprehensive educational program in each district.
9. The combined local share of the total cost of the revised program should be between 30 and 40 percent of the total cost.
10. Each district's share of its program entitlement should be based on the market value of taxable property in the district in relation to the total market value of all taxable property in the state.
11. Each district should be guaranteed the right to enrich its basic program entitlement by an amount equal to a fixed percentage of its program entitlement, or by a fixed dollar amount per student. The state should guarantee the yield for a fixed leeway tax for districts with below average property values per student.

IDRA also made preparations for the 1975 session of the Texas Legislature. The preparations included:

- continued studies of disparities between high and low wealth districts and the identification of inadequacies in the system

During this period, IDRA completed 7 research projects on the Texas system of school finance. The 7 projects were:

1) *New School Finance Suits for Texas* IDRA data in support of a new litigation effort in state court
2) *Wealth Disparities* Disparities in district wealth by demographic characteristics of school districts and disparities in educational input
3) *Tax Disparities* Disparities in effective tax rates by demographic and fiscal characteristics of districts
4) *Teacher Salaries* Variations in teacher salaries by demographic characteristics of districts

5) *Simulation of Educational Finance Plans* the equalization impact of various school finance proposals on subgroups of pupils and districts
6) *Cost of Bilingual Education* The development of a weighted pupil factor for bilingual education students in Texas and other states
7) The identification of critical situations developing as increased costs of education presented new problems for low and medium wealth districts

The June 1974 issue of the TEE *Newsletter* presented a case study of runaway expenditures in the Laredo ISD.[51] The July 1974 issue presented another case study of the impact of the increase in the cost of public utilities in the Northside ISD, where a 39 percent increase in the per pupil cost of electricity converted into a $0.025 increase in the tax rate for the payment of the electric bill alone.

- comparisons of Texas' investment in education with that of other states

  Annual comparisons of Texas educational expenditures with expenditures in all other states and with the national average were compiled and disseminated periodically.
- analysis of reform legislation enacted in other states

  Between the end of the 1973 session of the legislature and the beginning of the 1975 session, TEE/IDRA reported the specifics of new legislation which increased educational equity in the states of Utah, Florida, Kansas, Maine, Illinois, Wisconsin, Michigan, Colorado, New Mexico, California and New Jersey.
- analysis of the work of committees, commissions and other study groups

  IDRA developed a 17-point outline for use as a yardstick for the evaluation of the various proposals to be presented to the 64th Legislature
- development of evaluation criteria for proposed legislation

  Each bill introduced in the Texas Legislature dealing with school finance was evaluated against the 17-point yardstick developed by IDRA staff.
- the continued dissemination of this information in presentations, conferences, legislative committee hearings, position papers, letters, articles and special bulletins communicated to legislators, study groups and the general public.

On the eve of the meeting of the 64th Legislature, the Governor's Office of Educational Research and Planning issued selective tentative recommendations for the restructuring of public school finance in Texas. Sixty meetings at the state's regional education service centers were scheduled to explain the recommendations and solicit responses. The entire December 1974 issue of the IDRA *Newsletter* was dedicated to the recommendations by OERP and the IDRA analysis and response.[52]

The following is a summary of the OERP document, "The Restructuring of Public Elementary and Secondary School Finance":

> *Equity For Students* Program Elements
>
> *Weighted Pupil Entitlements* The OERP plan for providing equity for students is based on the following three premises: 1) Students differ greatly in their educational needs, based on their unique learning rates, abilities, motivations, etc.; 2) The costs associated with meeting these needs vary widely, (e.g. it is much more expensive to provide vocational education than it is to offer a traditional academic program); and 3) School district populations differ in the percentage of students needing high cost programs.
>
> In order to respond to these differences in need and cost among students, OERP has outlined a weighted pupil approach for Texas school districts.
>
> Through this weighing system, the costs of various programs are indexed, with 1.00 being the least expensive program. Index factors then range upward to reflect the cost relationships among programs. For example, a program for the educable mentally retarded student may cost twice as much as a program for the regular student, so the former program would be weighted at 2.00.
>
> The weighted pupil system is then combined with a "full-time equivalent" pupil (FTE) allocation system for funds distribution. Thus, a student who spends 15 hours of the 30 hour instruc-

tional week in a vocational program, and the remaining 15 hours in traditional academic courses, has his school time prorated and the appropriate cost index factor applied to the percentage of time he spends in each program.

Data necessary for the development of OERP's Texas weighted pupil finance system was based on a sample of 42 school districts, seven in each of six size categories, which had been identified within their size categories as being "exemplary" in their delivery of educational services.

Audit data on the sample districts' expenditures of all state and local funds for 1972–73 were used for program-by-program cost analyses. Then a per FTE cost was computed for each type of program. These analyses were then indexed, and the average practice of the sample districts became the foundation for developing the weights.

The weights are intended to provide for all state foundation school program current operational costs. Expenditures from federal funds and for all debt service are external to the weighing system.

Thus established through cost analyses of existing programs in "exemplary districts," the weights were then modified to reflect program needs for students of the next decade.

An additional weight was provided to, ". . . sparse K-12 districts which have less than 1,600 FTE and which are county wide, or exceed 300 miles in district area."

Renewal OERP notes that historically our educational systems have made no investment in renewal. Similar to most states, "Texas has institutionalized the status quo in public education by failing to invest wisely in a system that encourages orderly changes in response to the changing needs of the students and the economy."

OERP stresses that a renewal system must go hand-in-hand with the weighted pupil approach to funding. Not only is it important to provide funds in a manner which considers differences in children, but it is equally necessary, ". . . to ensure that the funds are spent in a cost-effective manner to provide programs which meet quality standards." In the implementation of this system, OERP suggests the Legislature should prescribe core goals and objectives and direct the State Board of Education to adopt policies, guidelines and regulations which will accomplish the goals, yet provide ". . . extensive flexibility for local decision making within the established parameters."

OERP recommends an initial appropriation of 0.5 percent of the 1975–76 projected costs of current operations in the foundation school program, and a gradual increase until 5 percent is invested annually in the renewal system.

The foundation school program renewal system, OERP suggests, should have the following components: 1) *an accountability system,* 2) *a management information system;* 3) *a system of research and development,* and 4) *an accreditation process* residing with the Texas Education Agency.

Transportation To date, the cost of transporting students to schools has been shared by the state and local districts as part of the minimum foundation program (MFP). Having found that the MFP allocations are inadequate and "the method for determining and delivering these funds is outdated," OERP has developed new recommendations for funding transportation.

Based on cost analyses of 300 schools, the OERP transportation model suggests that all transportation allotments be made through the foundation school program, and that the eligibility limit for regular transportation be two miles. The model recommends that regular transportation maintenance and operation costs be made available through a formula based on average daily attendance, number of pupils transported, distance and other density factors.

OERP also suggests that bus replacement and special education transportation be addressed through similar equations, and that local districts should be free to contract with a public carrier, the state's share to be determined as if the district were operating its own bus system. Other transportation, e.g., vocational, bilingual and private, would be funded on a cost-per-pupil-miles-traveled basis. Finally, the model recommends that "The Texas Education Agency should be made responsible for updating allocation schedules and ensuring efficiency of operation."

Facilities The current system of financing school facilities does not allow for equalization since the state does not provide funds for facilities. Presently, the taxpayers in one district may have to make a greater tax effort to provide facilities of similar size and quality than do taxpayers in an adjacent district.

Noting that adequate facilities and equipment are important components of "quality educational opportunity," OERP recommends that ". . . facilities become an integral part of a comprehensive foundation school program by 1980–81. This should be achieved by beginning in the 1977–78 school year with financial assistance to school districts in the bottom quartile of taxable wealth per pupil."

OERP will provide a more detailed proposal for assisting school districts with facilities financing by December 20, 1974.

Finance Elements If the foregoing OERP program elements were to be adopted, the total state foundation school cost in 1975–76 would be $2.4 billion. The present MFP local share is some $300 million, or 20 percent of total costs, leaving approximately $700 million for "enrichment" purposes. Districts rich in local taxable wealth per pupil spend high above the MFP, while poor school districts tax themselves high to produce only a few "enrichment" dollars per pupil. OERP stresses that "most of the present levels of enrichment must become a part of the local share of the foundation program" or the "present inequitable system" will be continued. Thus, with the OERP plan the net local share foundation school costs would be increased to approximately $810 million, or about 40 percent of total program costs.

Considering legislative and administrative increases in the state's share of the minimum foundation program, the resulting biennial increase in the state spending according to the OERP recommendations, would be approximately $1 billion. OERP notes that this may seem like a substantial increase, but in terms of the poorer school districts, it simply lifts their average expenditure level to around the state average.

OERP makes the following recommendations as to how the state and local school districts would share the cost according to the revised plan.

State Share Placing the emphasis of its new finance system on "lifting the 'floor' of the program rather than on shifting the tax burden from local districts to the state," OERP recommends that the state share of total costs should remain around 60 percent. However, for the next several years, "the cost of improving the program and of coping with inflation should be assumed by the state."

According to OERP, the emphasis in determining the local district's share in the minimum foundation program should be placed on obtaining the ". . . best available estimates of property values" in Texas school districts. The following recommendations were made:

1) A monitoring agency should be responsible for developing and implementing ". . . procedures for securing quality estimates on an annual basis" through developing guidelines for the appraisal of property, and conducting sales ratio studies, appraisal audits and sample appraisals.
2) An index rate equal to the state's average effective tax rate for current operations at the time of implementation should be applied to the estimated value of taxable property within a district.
3) The index level should be permanently frozen at the cited level.
4) School districts that have been favored by the present inequitable system should be granted a five-year phase-in period in which they will increase their local effort to the level required for the local fund assignment.

Local Leeway The state should strive to establish a comprehensive foundation school program "floor" which does not need to be enriched through local tax effort in order to provide quality education. However, enrichment through local option ad valorem taxation should continue to be permitted.

The following is the IDRA response to the OERP recommendations as published in the same December 1974 issue of the *Newsletter:*

> Intercultural Development Research Association (IDRA) has continually stressed that reform in the system of school financing in Texas must involve a consideration of six basic factors: 1) total state and local effort, 2) wealth disparities, 3) tax effort, 4) pupil needs, 5) cost differences, and 6) municipal overburden. The IDRA response will consider these six factors plus several others in evaluating the degree to which the OERP plan will result in a more equitable system of public school financing.
>
> *Total Effort* Basic to the financial crisis in Texas public schools is the low total effort being exerted by the state as a whole. In spite of its privileged position on the basis of state wealth, Texas ranks 40th in the country in expenditures for education. In 1972–73 Texas expended $788 per pupil in average daily attendance in contrast to a United States average of $1,064, a New York high of $1,584, and an Alabama low of $590.
>
> All of the recommendations made by OERP total a $1 billion increase over the biennium, or approximately a $500 million increase each year. Dividing the annual increase by the 2 million children attending school in the state produces a $200 per pupil increase. This increase, added to the $788 per pupil already being expended, totals $988 per pupil per year. If none of the other states made any substantial increases in expenditures (and many of them have), Texas would still rank below the national average.
>
> The OERP recommendations do not go far enough in coping with the basic problem of low total effort in Texas toward the support of education. Although it will lead to a substantial increase (25 percent), Texas will still be behind the majority of states.
>
> *Wealth Disparities and Local Effort* A fundamental reason for the tremendous disparities in the Texas system of school finance is that the wealth of individual school districts varies so greatly throughout the state. Efforts to revamp the present system in order to provide equity, equalization, or in some way narrow the increasing range of school support between the lowest and the highest expending districts in Texas, must present a plan which compensates for this range in district wealth.
>
> Similarly, tax rates vary considerably over the state and reform must attempt to equalize the effort being exerted in support of comparable educational programs.
>
> In Texas the range in district wealth is almost unbelievable. Estimates for 1970 made by the Texas School Finance Study Groups indicate a range in taxable wealth per pupil from a state low of $5,147 in Edgewood to a state high of $10,862,838 in Provident City, and a 21,105-1 ratio between the poorest and the richest.
>
> The recommendations that the state establish a uniform appraisal system for determining district wealth is a sound recommendation, and it is properly included in the OERP report. However, the problem of wealth disparities will not be noticeably reduced. In fact, disparities will increase since true market values are probably much more accurate in the poorest school districts, and much more underestimated in the wealthiest districts. A uniform tax rate will produce 21,105 times more local tax revenues in one district than in another.
>
> The stabilization of tax effort recommended by OERP, as in the case of better appraisal of taxable property, is desirable. However, although it assumes state program equalization based on an equalized tax effort yield, there are low limits on the level that the state will equalize. This problem has been neglected for so long in Texas that expenditures in 1971–72 ranged from $328 to $7,332 per pupil per year in the various districts. This datum indicates that some school districts are currently expending more than $7,000 per pupil per year over and above the minimum foundation program, or more than 16 times the amount of school expenditures provided for in the minimum foundation program.
>
> The OERP plan contains no specific provision for responding to this problem. The amount of district power equalization built into the foundation program is too small to compensate for wealth

disparities in the state. No discussion is presented concerning state provisions for recapture of excess yield such as have already been implemented in other states.

Local enrichment is inadequately treated in the OERP plan. OERP makes a strong statement that "most of the present levels of enrichment *must* become a part of the local share of the foundation program, yet the study does not recommend either state enrichment equalization or limitations on the amount of enrichment allowed. On the contrary, OERP recommends that enrichment through local option ad valorem taxation should continue to be permitted."

The effect of this recommendation is the perpetuation of the degree of inequalities that currently exist, although the number of school districts in privileged positions will be reduced. Under such a plan annual per pupil expenditures may be narrowed from $328 to $7,332, to a range of perhaps $750 to $7,332 per pupil. This more than 9-1 ratio is still far from providing equality of educational opportunity.

Moreover, the gap between lowest and highest expending school districts is not static, but has been increasing yearly since the implementation of the minimum foundation program almost 25 years ago. While the OERP recommendations temporarily narrow this gap, they do not eliminate it, nor do they reverse the tendency for the gap to continue to increase. Thus, obsolescence is built into the program.

Future increased costs of education will be met by local enrichment in the wealthiest school districts, while poor districts will have to do without. And not until middle income districts begin to feel the deprivation sure to result from this inequity will the state again be forced to respond.

The unconstrained permissiveness of enrichment funds provides funds for the education of children not on the basis of effort, but on the basis of district wealth. OERP could have recommended at least continued enrichment with state equalization of yield on the same ratio as state equalization in the foundation program, or enrichment maximums as recommended by various legislative and study committees.

The recommendations do not take into consideration the effect of the available school fund, which as of November 9 was set at $200 per pupil. Since this is a flat grant distributed to all school districts, rich and poor, it has the effect of exacerbating rather than eliminating inequalities.

Pupil Need OERP recognizes that students differ in their educational needs. These differences mean that the cost of education for each student is not the same. OERP recommends the "weighted pupil approach" as one way of dealing with cost differences in educating students.

In the past, the Texas minimum foundation program has utilized average daily attendance (ADA) for the allocation of staff and support resources. Average daily attendance was utilized instead of average daily membership (ADM), in hopes that school systems would feel pressured to encourage attendance at school in order to keep from losing state support through pupil absenteeism. It is questionable whether districts' desire to avoid such financial penalties has indeed succeeded in reducing absenteeism.

At any rate, the use of average daily attendance to partially determine a district's level of financial support imposes severe penalties on poor districts. Districts with large numbers of low-income families, who have a consistently higher incidence of illness, who often lack transportation, and who live in non-preferred areas with poor drainage and a minimum of sidewalks, paved streets and bridges exhibit a concomitantly higher rate of absenteeism. These districts are, in turn, sorely handicapped by the ADA formula.

The Peat, Marwick & Mitchell study prepared for the Joint Interim Senate Committee on Public School Finance utilized the average daily membership in computing state aid in the weighted pupil approach.[24] In Utah, advocates for average daily attendance and average daily membership compromised and the weighted pupil approach for that state utilizes both factors in a formula where a school district's average daily attendance and average daily membership are totaled and then divided by two (ADA + ADM)/2.

The weighted pupil approach is combined with a full-time equivalent (FTE) allocation system for funds distribution. The OERP study defines a Full-Time Equivalent as all day participation in a specific program, or 30 hours a week of student participation in a program. Thus, if three students participated for 10 hours a week apiece, the sum of the three students' participation is a full-time equivalent.

OERP does not analyze or recommend whether the weighted pupil approach is then to be based on the number of students participating or in actual attendance. The term "full-time equivalent" may be misleading since prior to the implementation of a weighted pupil approach, some states used the term as synonymous with average daily attendance.

The OERP report does not give estimates of the number of pupils requiring special programs. One way of estimating pupil needs (as distinguished from just current costs) is by examining achievement. Children whose unique educational needs are not being met will not perform well in school. Although data on achievement are not available on children throughout the state, statewide sample surveys (such as the U.S. Commission on Civil Rights survey of 1969) and studies of particular districts indicate that Mexican American pupils are performing far below Anglo pupils. We also know from analyses conducted by IDRA that state educational aid is distributed in a way that does not equalize the differences in expenditures between Mexican American and Anglo pupils, and between high-income and low-income pupils. Thus, local and state revenues in Texas are found to have a disequalizing effect on educational opportunity as measured by achievement needs.

The OERP recommendations do not go very far in remedying these inequalities. Compensatory education for the educationally disadvantaged, bilingual education, the education of migrant children, and "other programs designed to aid students in taking full advantage of the opportunities available in the public schools," are all lumped together under the heading of "parity programs" and given an add-on weight of .15 per pupil for 1975–76 and .40 per pupil for 1976–77. Applying the .15 weight to the $650 basic unit allocation for the 1975–76 and the .40 weight to the $700 recommended for 1976–77 yields $97.50 per FTE in 1975–76 and $280 per FTE in 1976–77. While this is an improvement over the current $90 per pupil provided by the state for bilingual education, it is far from what is needed. California currently spends approximately $350 per pupil on bilingual education; the recommended level for an "ideal" program, according to an official in the California State Department of Education, is $500 to $550 above the normal operating expenses.

A weighted pupil approach does little to remedy the existing inequities plaguing the State of Texas. In itself, it merely provides a better way of distributing state aid, but the large disparities in local wealth, tax effort, and tax rates are not necessarily affected.

Cost Differentials and Municipal Overburden Two concepts commonly incorporated into school finance reform activities but not dealt with by OERP are cost differentials and municipal overburden.

"Cost differentials" means the taking into account of the varying costs of comparable educational programs in different regions of the state, or in different types of school districts. Betsy Levin's recent publication, *The High Cost of Education in the Cities*, cites the differences between urban, rural, and suburban school districts.[53] Inclusion of this criterion in a new state school finance plan may be necessary to insure equity in funding.

OERP did not make a provision for salary differences in varying school districts. If it is to be assumed that money made available on the basis of weighted pupil factors is to be used for the payment of teacher salaries on the same salary schedule as is currently in effect, some school districts may be severely penalized, since some school districts have teachers with higher degrees and more experience than others.

To illustrate, two school districts in an urban setting with approximately 20,000 children have a similar number of teachers. Both school districts are below state average in taxable wealth and per pupil expenditures, and both are way above average in tax rate. One school district has 10.81 percent of the teachers with master degrees and they average 6.4 years of experience. The other school district has 27.59 percent of the teachers with master degrees and they average 7.71 years of experience. The difference in the minimum foundation program salary schedule between B.A. and M.A. teachers will assure that one school district will have a teacher payroll of at least $160,000 higher than the other. If the state program fails to take this into consideration, then one school district will have some 20 more teachers with less M.A. degrees and experience and the other school district will have 20 fewer teachers with more M.A. degrees and experience. Such a condition can easily result in school district and public opposition to continued training and extended service of teachers.

Municipal overburden refers to the narrowing property tax base of urban centers due to the increased competition for tax dollars by the large and increasing number of taxing entities, such as community colleges, health districts, utility districts, etc. In all fairness to OERP, no other state has been able to develop adequate strategies for coping with the problem.

Renewal OERP recommendations make a strong plea for the implementation of an accountability system to accompany the implementation of a weighted pupil approach. Extensive community meetings sponsored by IDRA in the past have identified an extensive concern on the part of the public that funds allocated by the state to a school district be expended for the child for whom they were intended.

As stated in the OERP report, Florida enacted an accountability system for this purpose to accompany the weighted pupil approach. This accountability system goes beyond the district level, with the individual school plant being the basic unit for accountability.

The crying need for pupil performance accountability is not mentioned specifically in the OERP report. Texas has no state program for periodic testing, evaluating or reporting of student achievement. Accountability for the expenditure of funds is meaningless if it does not incorporate an evaluation of the product.

OERP does not give reasons for its recommendation that "responsibility for accreditation should continue to reside with the Texas Education Agency." In view of the deplorable performance of school districts in their failure to educate large segments of the student population, perhaps an alternative to the current ineffective structure should be considered. Not only should state goals be incorporated, but in view of the recent *Lau v. Nichols* and *Serna v. Portales* court decisions, the success/failure of children should be considered as a basis for accreditation rather than the current focus on school processes as accreditation criteria.

Facilities The funding of school facilities demands much more attention than that given in the OERP report, although a subsequent report on this topic is forthcoming.

The failure of the State of Texas to provide any form of assistance for facilities, let alone equalization, is a most clear-cut violation of the Texas Constitutional provision for the establishment of a system of education. Leaving the entire cost of providing facilities to the local districts has resulted in the absolute deprivation which the U. S. Supreme Court sought in *Rodriguez.*

Texas is now in the minority of states which do not have some form of state assistance for the construction of school facilities. Other states either bear the cost (Maryland), provide revolving loans, include cost of facilities in the foundation program, or provide state grants to the local districts.

OERP recommendations of assistance in 1977–78 to the bottom quartile of school districts based on taxable wealth per pupil should be expanded to include other criteria, such as indebtedness of school districts (past effort), population growth, need for replacement of hazardous or obsolete structures, population mobility patterns, and cost of land acquisition and construction. It is hoped that the forthcoming OERP supplement will deal effectively with this topic.

Summary

The OERP report provides a springboard for discussion and consideration of school finance reform in Texas. Recommendations made in this study are more directed toward improvements in the operation of the system than in revamping the system.

Basic problems which will inevitably lead to continued disparities and perhaps future litigation have not been adequately addressed. There are no recommendations made relative to the future of the available school fund per capita distribution, ways of obtaining fiscal neutrality, coping with cost differentials and municipal overburden, and stopping, or at least diminishing the trend of widening disparities between rich and poor school districts.

Several topics in the report need more specificity for effective evaluation. These topics include the implementation of the weighted pupil approach, the establishment of a stable effective tax rate, and criteria for state support for physical facilities.

OERP statements relative to the need for equalizing access to quality educational opportunities for all public school students, and warnings concerning the ultimate "cost of not educating" to Texas' general welfare are in no way matched in the recommendations. The unlimited utilization of enrichment funds without state equalization will perpetuate school district wealth and expenditure disparities.

Although OERP recommendations would increase the minimum level of education in the state, they do not promote equality of educational opportunity.

The governor's recommendations were immediately followed by State Board of Education (SBOE) and Texas Education Agency (TEA) recommendations. The following is a summary of the 12 basic recommendations and three alternative recommendations to be used if the legislature failed to enact a new method for the determination of local taxpaying ability based upon the market value of taxable property:

> The state board plan is herein examined in light of six fundamental school finance criteria developed by IDRA. These criteria, which should be considered in any school finance plan that would promote equality of educational opportunity, are: total effort, fiscal neutrality, equalized local tax effort, pupil need, cost differences, and accountability. Also examined are: the recommendations on average daily attendance, regional service centers, and the proposed alternatives for full state funding.
>
> **Summary of State Board Recommendations**
>
> *Recommendation #1* Presently authorized increases in the foundation school program should be fully implemented according to schedule. Kindergarten bilingual education along with any increases in the foundation school program enacted by the 64th Legislature should be incorporated into the program recommended in this report.
>
> *Recommendation #2* Average daily attendance for state aid purposes should be calculated on the basis of the best four six-week, best three nine-week, or best two twelve-week reporting periods.
>
> *Recommendation #3* Staffing allocations for regular program personnel should be improved.
>
> 1. Classroom Teachers—One regular classroom teacher for each 23 ADA or major fraction thereof for districts with more than 156 ADA. Allocations for smaller districts and for vocational and special education should remain as in current law. For kindergarten through third grade, the actual ratio within the district of students to teachers should average 20 students (ADA) per teacher. Teachers allocated under the foundation school program should be required to perform teaching duties, as defined by the regulations of the State Board of Education.
> 2. Special Duty Teachers—Up to 15 percent of the allocated classroom teachers may be designated as special duty teachers and paid accordingly.
> 3. Aides—One aide for every 10 classroom teachers, allocated among three pay grade levels, subject to percentage limitations.
> 4. Counselors—One counselor for each 1,000 students in average daily attendance or major fraction thereof allotted under policies established by the State Board of Education.
> 5. Supportive Professionals—One unit for each 275 ADA for districts with 1,000 ADA or more. Three units for districts from 500 to 999 ADA. One unit for districts with less than 500 ADA with an accredited four year high school. These personnel should be allocated among pay grades on the basis of maximum percentage allocations. Sep-

arate allocations for supervisors and special service personnel should be replaced by the new formula.

6. Principals—One unit for the first 15 CTU and one for each additional CTU with no credit for fractions. Principal units should be divided between head principals and assistant principals. A district with an accredited four year high school and fewer than 15 CTU should be permitted to use one CTU as a part-time principal.
7. Superintendents—One unit for each district operating an accredited four year high school (current formula).
8. Staffing Flexibility—The commissioner of education, subject to the policies of the State Board of Education, should be permitted to allow flexibility among the categories of personnel allocated under the foundation school program for purposes other than vocational and special education. However, flexibility shall not increase the level of spending under the foundation school program.

Recommendation #4 Allotments for operating costs other than professional salaries and transportation should be based on $175 per ADA. Present operating allowances for the support of vocational education, special education, and bilingual education costs should be continued. A basic allotment of not less than $3.00 per ADA should be provided to support the acquisition of printed and audiovisual materials for the learning resources centers.

Recommendation #5 Formulas for the transportation allotment should be increased by approximately $800 per bus route. The present formula for the provision of special education transportation should be maintained at $150 per eligible student transported.

Recommendation #6 Expenditures from Title I of the Elementary and Secondary Education Act (ESEA, Title I) for educationally disadvantaged children residing in high concentration areas of low-income families should be supplemented by a state allotment of $100 per pupil.

Recommendation #7 The Legislature should adopt a system for the determination of estimates of the market value of taxable property in each school district in the state, and for the establishment of an index of such values.

Recommendation #8 The foundation school program should be financed from a combination of state and local funds. The local share of the cost of the Program should be determined by the application of the equivalent of a $.25 tax rate per $100 of market value of taxable property for the state as a whole. Thus, the local fund assignment of each district should be determined by the application of the same rate to the index estimate of the full market value of taxable property in each district. The state share of the foundation school program should continue to be guaranteed.

Recommendation #9 An enrichment program should be established which would guarantee each district $300 per ADA in additional revenue for an additional local tax effort of $.40 per $100 in market value.

For up to the first $100 per ADA of such revenue, the district would levy the equivalent of a tax rate not to exceed $.10 per $100 of the market value of taxable property in the district. Guaranteed state aid would be supplied to those districts unable to raise $100 per ADA by the application of such a rate.

For up to the second $200 per ADA of such revenue, the district would levy the equivalent of a tax rate not to exceed $.30 per $100 of the market value of taxable property in the district. Guaranteed state aid would be supplied to those districts unable to raise $200 per ADA by the application of such a rate.

Recommendation #10 The basic financial support of the regional service centers should be increased by $1.00 per ADA for a total of $3.00 per ADA.

Recommendation #11 The computer services allocation for regional service centers should be incorporated under a broader allocation for information services, including financial support for computer processing on a statewide network, the development of a common core of educational data, the provision of communication services, the provision of technical assistance services, and central administration.

Recommendation #12 Any revision in present school finance formulas should be phased in over a four year period beginning in 1975–76. The full plan would be operational in 1978–79.

In making the preceding recommendations, the state board is fully aware of the problems of obtaining market value information as an indicator of taxpaying ability in Texas school districts.

Texas has no workable definition of taxable property, no agency charged with collecting and verifying valuations of taxable property, and no instrument for recording property sales. The board notes that major school finance studies since 1925 have been unable to persuade the Legislature to create a market value index.

Taking these obstacles into account, the state board proposes an alternative plan "to be used if the Legislature fails to enact a method for the determination of local taxpaying ability based upon the market value of taxable property." The alternative recommendations are as follows:

Alternative Recommendation #3 The present allocation formula for classroom teachers of 25-1 should be retained. However, the remaining recommended changes in staffing allotments should be fully implemented.

Alternative Recommendation #8 The foundation school program should be fully financed from state funds. The entire cost of the foundation school program should be guaranteed.

Alternative Recommendation #9 School districts should be permitted to use available local funds for enrichment of the foundation school program.

The following, quoted from the original text, is a summary estimate of costs of the proposed state board school finance program. An accompanying table estimates the cost of the school program at $3.041 billion, with $2.144 billion coming from the state and $0.897 billion coming from local funds for the 1978–79 school year. The SBOE recommendations include $160 per pupil in state-supported enrichment, and $430 per pupil in local enrichment. The state board's rationale urging expeditious reform of Texas' public school finance system accompanies the cost outline.

> The total cost of the complete financing plan contained in this report is projected to be $3,041 million compared to projected 1974–75 costs of $2,103 million for current operations from state and local funds. Under these proposals the cost of state aid to education would rise from $1,224 million in 1974–75 to $2,144 million in 1978–79, an increase of $920 million. However, approximately $276 million of this amount would be the result of presently scheduled increases in state aid to education. As a result, the added annual state cost of the recommendations contained in this report is estimated to be $644 million in 1978–79. Of this amount, $160 million would be for equalizing enrichment opportunities, while $484 million would be for increasing the basic level of the foundation school program.
>
> At present tax rates, the school districts of the state will be raising more than one billion dollars in revenues for current operations by 1978–79. Under this plan, however, this amount will be decreased as a result of the substantial increases in state aid to public school education. This would mean a reduction in local property tax rates in many school districts throughout the state.
>
> If the information on the market value of taxable property is not available, the alternative plan presented in this report would have the effect of increasing present commitments of state funds for 1978–79 by a total of $864 million compared to the recommended plan amount of $661 million.
>
> The cost figures presented in this table do not take into account either additional local funds for capital outlay and debt service or state funds expended outside of the foundation school program including those for teacher retirement contributions, textbooks, or special funding of vocational education or other programs.
>
> The Opportunity: Basic improvement of the system for the financing of public elementary and secondary education is long overdue in Texas. Enactment and implementation of a comprehensive public school finance plan will require some of the most far-reaching public policy decisions ever

> made in Texas. As this report demonstrates, the cost of improving educational opportunity in Texas is considerable. The failure to provide an adequate educational program for all of the children in Texas is ever more expensive. Now, as in the past, Texans must take advantage of the opportunity to create meaningful improvements in public school education.

As in the governor's recommendations, IDRA found the SBOE/TEA recommendations lacking. Of particular concern were the last two alternative recommendations. The inability of the 63rd Legislature to enact reform legislation had already resulted in a strong movement toward full state funding of the foundation school program. It was assumed that the absence of local funds from districts of varying wealth would produce an equitable system of school finance. And it would, except that every proponent of full state funding also proposed that the foundation program could be enriched by local funds. The end result would be that the local funds released by the generally equalizing local fund assignment would create an even more inequitable system. Under the SBOE/TEA recommendations, a very wealthy "budget balanced" school district that was previously paying from local funds the entire cost of the foundation program, would find the state paying the entire cost of the program. Local funds previously used for this purpose could be used for local enrichment that would result in greatly increased disparities between high and low wealth districts. It is not surprising that by this time, IDRA staff was screaming at educators, government officials and legislators. "It's the local enrichment, stupid! It's the local enrichment which creates the disparities. If you increase the local enrichment, you increase the disparities."

The following is the IDRA response to the SBOE/TEA recommendations as published in the January 1975 issue of the *IDRA Newsletter:*[54]

> *Total Effort* Legislation already enacted and being implemented will bring about automatic increases in minimum foundation program expenses. Estimates show that, given these presently authorized increases, by 1978–79 expenditures for the minimum foundation program will increase $33.7 million from the 1974–75 level.
>
> The state board's recommendations would increase spending for the minimum foundation program by $634 million for 1975–76. Breakdown of these MFP increases is as follows:
>
> 1. Anticipated average daily attendance (ADA) Formula—$15 million
> 2. Staffing—$186 million
> 3. Operating Allowances—$362 million
> 4. Transportation—$7 million
> 5. Compensatory Education—$64 million
>
> Dividing the $634 million recommended increase by the two and one-half million pupils in Texas schools, the net increase per pupil for 1975–76 would be $254. Added to the current state per pupil expenditure of $788, the recommended increase would produce a per pupil expenditure of $1,042. This amount is almost equal to the 1973 United States average per pupil expenditures for education, and it continues to be incompatible with the aspirations and resources of this state.
>
> **Fiscal Neutrality**
>
> Financing the Local Share of an Increased MFP: Based on a state board estimate of $1,000 per pupil minimum foundation program costs, the recommended $.25 effective tax rate would provide equalization in paying for the basic program for all school districts with MV/ADA of less than $320,000. (MV/ADA is a district's estimated total market value of taxable property divided by the number of students in average daily attendance.) Thus, this equalization would effect all but 58 school districts and all but 0.73 percent of the state's school population.
>
> *Local Enrichment Funds* The state board's proposed two levels of local enrichment provide for slight equalization of funds over and above the minimum foundation program. However, guaranteed yields at the two levels are so small that equalization would be very limited.
>
> The first $.10 tax increase for enrichment would equalize or neutralize local wealth differences

for all school districts with less than $100,000 market value per ADA. The number of school districts in the equalized category would be 737 (67 percent of all school districts) and 93 percent of the student population in the state.

The second level of local enrichment which guarantees a $200 yield for a $.30 per $100 market value tax would equalize or neutralize local wealth differences for all school districts with less than $66,667 market value per ADA. The number of school districts in this equalized category would be 673 (62 percent of all school districts) and 85 percent of the student population in the state.

State board recommendations place no limits on the amount of local enrichment which could be utilized, so that the existing range of per pupil expenditures would not be reduced.

Capital Outlay The state board does not address the problem of providing equitable facilities throughout the state.

Texas is now in the minority of states which do not have some form of state assistance for the construction of school facilities. Other states either bear the entire cost, provide revolving loans, include the cost of facilities in the foundation program, or provide state grants to the local districts.

The state board's failure to address this problem is a serious flaw in their recommendations.

Available School Fund The Constitutional provision for distribution of the available school fund in Texas has been a constant impediment to equalization. Increases in the available school fund now make this form of state assistance a built-in unequalizing factor. In 1972 per pupil expenditures in Texas ranged from $328 to $7,332. Yet all school districts received the same amount of state assistance through the distribution of the available school fund. Each district, regardless of wealth, received $200 per pupil from this source.

Although a change in this inequitable distribution would require a constitutional amendment, the State Board of Education might consider recommending such action.

Equalized Local Tax Effort The state board plan would provide for some amount of equalization of tax effort. As stated previously, the $.25 effective tax rate provides for a guaranteed yield for most school districts, and the two levels of enrichment taxes provide equalization for a diminishing number of school districts.

Beyond the equalization provided for in the $.25, $.35, and $.65 tax levels, there would be no further equalization of tax effort. A $.10 additional tax for further enrichment funding may yield anywhere from $5 to $10,000 per pupil, depending on the market value of taxable property in each district.

Similarly, in order to raise $100 of additional local enrichment funds, a school district must levy an additional tax at a rate varying from one-tenth of a penny per $100 market value to $2.00 per $100 market value. Such an action would be most unjust, not to mention its current prohibition by state statutes.

Pupil Need A school finance system cannot achieve equal educational opportunity without incorporating a student need criterion. This means different programs for different children.

Differences among children to be included are age, grade level, socioeconomic background, physical and intellectual differences, educational handicaps, and any unique characteristics of language, race, culture, and ethnicity.

In the State Board of Education plan, the provision for special pupil programs is on a categorical basis. In addition to existing programs, the state board recommends the categorical grant of $100 per pupil in state funds to educationally disadvantaged children now participating under the Federal ESEA Title I Program.

Funds to school districts for children with special learning characteristics can be adequately provided on a categorical basis or through a weighted pupil approach, such as the one recommended by the Governor's Office of Educational Research and Planning. The important fact of the distribution system is the amount of funds made available to the various school districts in order to respond to the needs of specific types of children.

The current categorical program has two sections which are not adequately addressed by the State Board of Education.

First, the amount of aid in some of the categories is exceedingly small. For instance, it has been calculated that the categorical aid being provided for bilingual education amounts to only $90 per participating pupil in the State of Texas. Although $90 is too small an amount for the implementation of an effective bilingual program, the problem is further compounded by $75 out of the $90 being used by the state education agency, an additional $10 being used by school districts for administrative purposes, and only $5 per pupil filtering down to the teacher and classroom level.

It should be noted, however, that the provision of $100 per pupil for the educationally disadvantaged as recommended by the State Board of Education should go far in increasing current services for these children.

The second problem in the current system of categorical aid in the State of Texas is that there is a lack of comprehensiveness in the planning and implementation of pupil programs and services. Not all school districts participate in all programs and the extent of participation is often limited by the availability of categorical funds, school district interest and effectiveness in acquiring categorical funds, and bureaucratic procedures for the implementation of programs. Implementation of a weighted pupil approach could modernize the laundry list of categorical programs implemented and enacted for the past 25 years.

Cost Differences The State Board of Education does not address the problem of differences in cost in the various geographic and population regions of the state. Equality of educational opportunity is not brought about through the expenditure of identical amounts of money for all children in the state. If inflationary factors, such as are commonly found in large urban centers, diminish the purchase value of the dollar, the distribution system must compensate for this factor. Professional salaries, non-professional salaries, and costs of services and materials should determine adjustments for the various school districts in the state.

Accountability The state b3oard plan does not adequately address the question of accountability. While it encourages a program for measuring the performance of the public school system in terms of staff competency, student performance and efficiency of operation, it does not provide the necessary funds to implement an effective accountability system.

Average Daily Attendance The State Board of Education recommends a change in computing a school district's average daily attendance which determines the extent of minimum foundation program assistance provided to the districts. The new formula allows a school district to base its annual average daily attendance on the basis of the best four out of six six-week reporting periods, the best three out of four nine-week reporting periods, or the best 2 out of 3 twelve-week reporting periods. Such a move will eliminate some of the hardships experienced by school districts with high levels of inclement weather, illness or epidemic, etc. This change, however, will not alleviate the problem of low wealth school districts which also have large numbers of low wealth families. Ghettos and urban conditions which preclude high attendance due to an absence of adequate drainage, street paving, and sidewalks will continue to impose financial penalties on those school districts. The lack of adequate medical services characteristic of the economically disadvantaged will impose additional financial hardships in funding the school program.

The State Board of Education could have considered the use of average daily membership in computing minimum foundation program allocations. The rationale once used in support of average daily attendance, that district personnel will be motivated to encourage children to attend school, has not proved effective. It appears that children are absent due to bad weather, illness, and environmental conditions, regardless of a district's interest in attendance. The use of average daily membership will allow a school district to depend on its minimum foundation program allocation for the employment of professional staff and the provision of instructional programs, a financial expenditure which the school district must bear regardless of the attendance characteristics of children.

Regional Service Centers The State Board of Education recommends increased allowances for services provided to school districts by the regional service centers. Perhaps the State Board of Education should review present policies in the funding and operation of regional service centers which penalize low wealth school districts. Currently, the State of Texas subsidizes services which are provided by the regional service centers. These may include computerized payroll, attendance reporting, test scoring, audio/visual aids, and other forms of instructional media. Unfortunately, the amount of assistance provided by the state is not sufficient to pay the entire cost of these services; therefore, it is common practice for the regional service centers to charge the individual school districts in the region for services acquired. Participation in these services often cost a school district $.50, $1.00 or $1.50 per student in average daily attendance. As a result of this charge, the low wealth school districts in the region find it financially impossible to participate in utilizing instructional media from the regional service center. At a cost of $1.50 per student, it would require $30,000 from the Edgewood Independent School District to participate in a program. Since poor districts do not have these funds readily available, it means that the state-subsidized regional service centers provide state-subsidized services to the school districts that can afford to pay for them and no service to the poorer school districts.

Proposed Alternatives for Full State Funding The State Board of Education recommends a massive effort by the state to ascertain the market value of taxable property in each school district. Such an effort is necessary in order to allow for an equal determination of local ability to pay the local share of the minimum foundation program. Such an undertaking is being recommended by most groups in studying school finance in Texas and is essential both for the replacement of the economic index currently in use, and the implementation of equalization in the system of public school finance.

Should the Texas Legislature be unwilling to enact the recommendations for determining local wealth in order to ascertain a school district's ability to support the minimum foundation program, the State Board of Education then recommends as an alternative that the entire minimum foundation program be funded at the state level and any and all local funds be used for enrichment purposes.

This alternative is a startling contrast to the various alternatives calling for increased equity and equalization in the state program of school finance. Since the alternatives provide for no local contribution to the minimum foundation program, enrichment funds would be completely proportionate to the wealth of the school district. Recommendations in the state board plan, such as classroom teachers, special teachers, aides, secretaries, counselors, supportive and administrative personnel would be furnished by the various school districts in proportion to their taxable wealth.

The alternative proposal would further reduce equalization in the present system of school finance, and it would make quality education beyond an inadequate minimum entirely a function of the taxable wealth of school district.

A third set of recommendations surfaced early in the legislative session. The recommendations were formulated by the Texas State Advisory Committee to the U. S. Commission on Civil Rights, working closely with IDRA staff. Although the recommendations, and the resulting HB 1715 by Rep. Carlos Truan of Corpus Christi and Rep. Eddie Bernice Johnson of Dallas, included proposals from OERP, the SBOE/TEA and the Texas State Teachers Association (TSTA) recommendations, they easily surpassed all other proposals and proposed legislation in the degree of equity and reform provided. The bill was basically the result of a series of school finance conferences held by the School Finance Subcommittee of the Texas State Advisory Committee to the U. S. Commission on Civil Rights. Authors of the bill relied heavily on the expertise of noted school finance authorities such as Kern Alexander, Roe Johns, and James Hale. An attempt was made to relate various aspects of the bill to the IDRA criteria for equality of educational opportunity presented in the February 1975 issue of the IDRA *Newsletter*, "Elements of Equitable School Financing."[55] Some aspects of the bill were similar to proposals made by the Governor's Office of Educational Research and Planning, recommendations made by the Texas State Teachers Association, and legislative proposals of the State Board of Education. Needless to say, HB 1715 surpassed all other proposed legislation in the degree of equity and reform provided.

The following is a summary of the Truan/Johnson bill based on the Texas advisory recommendations:

Minimum Salary Schedule HB 1715 provided a minimum salary schedule with a beginning salary for a teacher with a bachelor's degree and no years of experience at $8,000, and increments of 5 percent ($400) for each year of experience up to a maximum of 10.

Distribution System HB 1715 provided for a weighted pupil approach for support of the various programmatic activities in the school. Weighted pupil factors for the regular program ranged from 1.00 for grades 1, 2, and 3, to 1.20 for kindergarten.

Special programs provided for weighted pupil factors of from 1.25 for distributive education to 2.63 for agriculture. Special programs for exceptional students provide weighted pupil factors of from 2.22 for the educable mentally retarded to 5.32 for multiple handicapped children. All of the weights assigned under this bill were identical to the weights incorporated into the governor's bill, as proposed by the Governor's Office of Educational Research and Planning.

Special programs for other unique classes of children differed dramatically from the governor's proposal under this plan. Whereas the governor recommended add-ons for the educationally disadvantaged, bilingual, and migrant children of .15, .25, and .40 for 1975–76, 1976–1977, and 1977–78 and thereafter, respectively, HB 1715 provided the following weights: educationally disadvantaged—2.20; bilingual education—2.00; gifted—2.05; and migrant education—2.15.

This plan not only provided larger weights for the three categories of students, it added a weight for the gifted, and provided for faster implementation than the governor's plan.

Base Student Cost Whereas the governor's plan provided for a base student cost of $635 for 1975–76 and $670 in 1976–77, this bill provided for a base of $700 beginning with the 1975–76 school year. This means that the weighted pupil factor of 1.0 would be the equivalent of $700 per child, and other factors for special programs will be the weighted factor as a multiple of $700.

Sparsely Populated School Districts HB 1715 provided for special assistance to sparsely populated school districts of less than 150 square miles and less than 500 students in average daily membership.

Transportation As in other legislative proposals, HB 1715 provided a rather complex formula which provides additional resources to school districts for transportation. A unique aspect of this bill was that the minimum distance from school to qualify for public transportation was reduced from two miles to one mile.

Capital Outlay HB 1715 proposed a three-part formula for state assistance for debt service, site acquisition, school construction, remodeling, repairs, and capital equipment. Assistance was to be provided in the minimum foundation program as follows:

(1) $50.00 per student in average daily membership;
(2) plus $50 per student in average daily membership increase over the previous year; and
(3) $50 per student in average daily attendance housed in facilities more than 40 years old (3 year limit).

The bill also provided up to $1500 per classroom for equipping new vocational education programs.

Financing the Program The proposed program was to be financed by a local fund assignment, continued distribution of the available school fund on a per capita basis, and the state share of the program. Unlike other major bills introduced during the session of the legislature, the local fund assignment was set at the average tax rate for the state in 1974–75, and it was required that it be raised by the local school district. It was assumed that school districts able to raise the local fund assignment with a smaller tax rate would continue to do so. The bill provided for state regulation in the determination of local wealth.

Enrichment (Local Leeway) HB 1715 provided for a local school district to surpass the minimum foundation program by any amount it wished, but not to exceed 20 percent of the minimum foundation program. Up to 50 percent of the enrichment funds could be utilized for salaries. The cost of enrichment funds were shared by the local school district and the state through the same equalization formula used in the minimum foundation program.

Renewal HB 1715 provided for self-evaluation and accountability in a manner similar to provisions in the governor's plan. One slight difference was that renewal funds ranging from .5 percent of the minimum foundation program in 1975–76 to 5 percent of the minimum foundation program when fully implemented would be made available beginning in the 1975–76 school year.

Needless to say, IDRA staff gave a hearty endorsement to the Texas advisory recommendations with only one reservation. The proposed teacher salary schedule, although $1,400 higher than the existing schedule and $570 higher than the governor's recommendation, was still substantially below the national average and salaries for comparable professions.

Disappointment with most of the school finance recommendations and proposed legislation since the reversal of *Rodriguez* led IDRA staff to develop and publish criteria for an equitable system of school finance. The 17 elements of this effort became the standard for assessing school finance legislation for the next 20 years. The following are the 17 elements as they appeared in the February 1975 issue of the IDRA *Newsletter:*

A. Total Effort

Element 1. The total effort exerted by the state in support of the educational system should be proportionate to the financial resources of the state.

a. In the 1972–73 school year, Texas ranked 40th in the country with a per pupil expenditure from state and local sources of $778. This compares poorly to the national average of $1,064, and is a far cry from the $1,584 expended by the highest expending state.

b. If Texas were to spend for education in proportion to state resources, the amount spent per pupil would be in excess of $1,235. This means an increase of $457 per pupil per year at a total annual increased cost of $1,142,500,000.

c. If attempts to increase total effort were to be phased in over a number of years, and the immediate goal were to reach the national average, per pupil expenditures would have to increase by $286 at a total annual increased cost of $715 million.

d. Any amount of annual increase of less than $715 million will perpetuate an inferior state effort.

Element 2. Federal funds should be utilized for the equalization of wealth disparities among the states.

a. Federal funds should be utilized for the provision of assistance to states lacking state and local resources for the support of education.

b. Federal subsidizing of programs in states having sufficient resources should be in addition to state efforts and not in lieu of state effort.

B. Meeting Pupil Needs

Element 3. The state plan for education should provide for meeting the needs of pupils with a variety of characteristics.

a. Different pupil characteristics require different levels of financial resources. An ideal program will provide supplemental funds for varying types of course work, varying teacher-pupil ratios, special equipment and materials, and varying teaching situations.

b. Special funds should be available for children from economically disadvantaged homes, differing language and cultural characteristics, and differing capabilities.

Element 4. Programs for special children should be comprehensive, responding to various characteristics rather than an array of programs operated independently or in tandem.

Element 5. The state program should provide full support for all aspects of the educational enterprise.

C. Neutralizing Wealth Differences

Element 6. The wealth of a local school district should not affect the amount of funds available to that district for the educational program.

a. An ideal system of local/state sharing of the costs of education insure that the state equalization program will compensate for a lack of local taxable wealth.

b. A district power equalization formula should be developed which guarantees equal yield for equal effort.

Element 7. A recapture provision should be included through which excess funds produced in a district by a uniform tax rate are recaptured by the state for redistribution as part of the state equalization program.

D. Equalized Local Effort

Element 8. A uniform method of determining local wealth should be developed and implemented throughout the state under state supervision and regulation.

a. Standard appraisal practices should be implemented throughout the state.

b. Tax assessors should receive training and licensing by a state regulatory agency.

Element 9. All school districts should use a uniform minimum tax rate with a guaranteed uniform yield.

Element 10. School districts should have the option of exerting greater effort through additional local taxation with a state guaranteed equalized yield.

Element 11. Funds in excess of the state guaranteed yield produced by extra local taxes should be recaptured by the state for support of the state equalization program.

Element 12. If the state imposes a limit on the amount of extra support it will equalize, this same limit should be imposed on the raising of additional local tax revenues.

E. Cost Differences

Element 13. The state distribution plan should allow for cost differences under a state teacher salary schedule due to individual district staff characteristics.

Element 14. The state distribution plan should allow for cost differences in salaries, materials, and services due to varying regional cost of living factors.

F. Capital Outlay

Element 15. The state school finance plan should include cost of site acquisition, school construction, and school repair. All elements applicable to an equalized school program should be applicable to capital outlay expenses.

G. Local Control

Element 16. The state school finance plan should allow local districts discretionary powers over the expenditure of funds made available from state and local sources.

H. Accountability

Element 17. The local school district should be accountable to the state and to the general public in the operation of the school district and the utilization of all funds.

By April 1975 five major bills had surfaced in the 64th Legislature. The five major bills, with legislative sponsorship and origin were as follows:

- HB 1083 by Massey, based on the study and recommendations of the Governor's Office of Educational Research and Planning;
- HB 420 by Hale, based on recommendations by the Texas StateTeachers Association;
- HB 1126 by McAlister, based on the SBOE/TEA recommendations;
- HB 946 by Kubiak, based on the Interim House Committee study chaired by Rep. Dan Kubiak; and
- HB 1715 by Truan and Johnson, based on recommendations by the Texas advisory.

The entire issue of the April 1975 *Newsletter* was devoted to an analysis, evaluation and comparison of the five bills using the IDRA developed criteria presented above.[56] None of the five bills received a perfect rating, but the Truan/Jonson bill provided more equalization than any of the others. All of the bills provided a higher level of education funding, yet the McAlister and Kubiak bills did not provide for immediate implementation of special programs for the disadvantaged. The Hale and McAlister bills provided the largest increases in teacher salaries. The Massey and Truan/Johnson bills included a weighted pupil approach, and the Massey, Kubiak and Truan/Johnson bills used average daily membership in lieu of average daily attendance. The Massey bill was the only one which did not provide for equalization of enrichment funds and the Truan/Johnson bill was the only one which set a limit on enrichment funds without state equalization. The Truan/Johnson bill was also the only one providing state assistance for capital outlay, and none of the bills provided for state recapture of excess funds.

On June 1, 1975, the Texas Legislature passed House Bill 1126 (McAlister, based on SBOE/TEA recommendations) which appropriated an increase of $653 million in state funds for education during the biennium. The following is a summary of HB 1126 as enacted by the Texas Legislature:

Accreditation Each school district must be accredited beginning with the 1977–78 school year by the central education agency.

Admission of Students Every child who is a citizen of the United States or a legally admitted alien and who is over the age of five and not over the age of 21, shall be permitted to attend the public free schools and be entitled to the benefits of the available school fund.

Bilingual Education Each school district which has an enrollment of 20 or more children of limited English-speaking ability in any language in the same grade level shall institute a program in bilingual instruction. Support from the foundation school program is limited to kindergarten through third grade, with consideration of fourth and fifth grades. Bilingual instruction beyond the fifth grade shall be at the expense of local school districts.

Driver Education The amount appropriated for driver education is $25 per student enrolled in driver education with a maximum of 20 percent of high school enrollment in grades 10–12 counted.

Equalization for Program Enrichment Each district with a local fund assignment per student in average daily attendance (ADA) which is less than 125 percent of the total statewide local fund assignment per ADA is eligible for additional equalization aid, with the amounts determined by the formula in Section 16.302 of the law.

In order to qualify for the maximum aid under this formula, the district must raise the difference between the amount of state equalization aid per ADA and $70 per ADA. If the district chooses to raise an amount less than this full amount, state funds would be reduced proportionally. If the total state aid guaranteed by this section exceeds $50 million for the 1975–76 and 1976–77 school year, each districts' equalization aid would be reduced proportionally until the total amount of state funds required equaled $50 million.

Educationally Disadvantaged Students Each school district which receives federal compensatory education aid is eligible to receive an allotment of $40 for each educationally disadvantaged pupil. However, if the total amount requested exceeds $25,400,000 per year, each district's allotment will be reduced proportionately. Beginning with the 1976–77 school year, a coordinated plan for the use of federal and state compensatory education funds must be submitted by districts to the Central Education Agency.

Governor's School Finance Study The amount of $5 million has been allocated to the governor to conduct a school finance study, which will include a determination of each school district's ability to support public education based on the value of taxable property in the district. A summary of the governor's recommendations and proposed legislation will be due November 1, 1976.

Local Share of Program Costs A school district's share of its guaranteed entitlement under the foundation school program is determined by multiplying the total taxable value in the district by an index rate of $.30 per $100 valuation of property for the 1975–76 school year and $.35 per $100 valuation for the 1976–77 school year.

No local fund assignment in 1975–76 shall exceed 100 percent of 1974–75 maintenance tax revenue, nor shall increase by more than 100 percent over the 1974–75 local fund assignment.

No local fund assignment in 1976–77 shall exceed 150 percent of 1975–76 maintenance tax revenue, nor shall increase by more than 200 percent over the 1974–75 local fund assignment.

Market Values The market values to be used in 1975–76 and 1976–77 for determining local share of financing public education will be based on the values for the 1974 tax year as reported in the "Official Compilation of 1974 School District Value Data" by the office of the governor. For succeeding school years, second prior year values are to be used.

The commissioner may adjust Management Services Associates' market values to correct apparent discrepancies and may reduce local fund assignments of a district in which local natural or economic disaster has dramatically reduced the value of property since 1974.

Operating Cost Allotment Each school district shall be allotted $90 per each student in average daily attendance in 1975–76 and $95 in 1976–77 and thereafter.

Operation of Schools Beginning with the 1975–76 school year, each school district shall operate on the basis of a quarter system, with its schools being in operation during at least three, three-month quarters during each school year and providing 180 days of instruction for students and 10 days of in-service education and preparation of teachers.

Personnel Allocation The allocation of regular program personnel shall be based on the number of regular program students in average daily attendance (ADA) according to the following schedule:

One personnel unit for each 19 ADA in grades K–3; one for each 21 ADA in grades 4–6; and one for each 18 ADA in grades 10–12.

Personnel units may be used for any combination of personnel in the compensation plan provided that the total number of personnel units for each position chosen multiplied by the personnel unit value for that position does not exceed the total number of personnel units allotted.

Districts with 300 or more square miles and less than 1,000 regular ADA receive additional allotment according to the formula. For 1975–76 and 1976–77 school years, no district with less than 1,000 ADA shall receive fewer regular professional units than it received in 1974–75.

Regional Service Centers Regional Service Centers allotments shall be increased to $3 per student in average daily attendance.

Salary Schedule A school district must pay each employee who is qualified for and employed in a position classified under the Texas Public Education Compensation plan not less than the minimum monthly base salary, plus increments for experience.

Each step in pay grades seven (teacher, BA degree) through 18 (superintendent, system over 50,000 ADA) will be increased by $140 per month; each step in pay grades one (teacher aide) through six (certified, non-degree teacher) will be increased by $70 per month.

Save-harmless Provisions No district shall receive less than 104 percent of the state aid it received in 1974–75.

Student-Teacher Ratios Each school district must employ enough certified teachers to maintain an average ratio of not less than one teacher for each 25 students in average daily attendance.

Transportation Basic allowances were increased by 62.5 percent, and special education allowances increased to $260 per pupil transported.

Vocational and Special Education No change has been made in the law except that the legislature is required to set limits on vocational and special education spending.

The description of HB 1126 provided in the June issue of the *IDRA Newsletter* is immediately followed by the following IDRA critique:[57]

> The critical issue which provided the initial impetus for school finance reform was the dissolution of inequities in the Texas system of financing education that were so dramatically brought to light in the *Rodriguez* case. The equity question was frequently ignored in the din of debate over the various proposed school finance bills. Given the wide disparities among districts in their ability to raise revenue for education from local taxes, IDRA wishes to examine those portions of the new school finance law which address (or fail to address) the question of equity.
>
> There are basically two sides to the school finance coin that must be considered in regard to the equity issue: equity in raising revenue for education (taxpayer equity), and equity in the distribution or expenditure of revenue for education (funding equity).
>
> **Taxpayer Equity**
>
> A truly equitable system of raising revenues would be obtained if an equal amount of revenue per pupil could be raised in every district of the state with the same amount of tax effort. If all districts were equal in property wealth from which local tax revenues are raised, taxpayer equity would not be an issue. But since there are wide disparities in local taxable wealth, the state must be responsible for equalizing the ability of school districts to raise tax revenue. Ideally, this might be accomplished

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by requiring a uniform tax rate statewide and recapturing the excess revenues raised in rich districts and distributing these among the poorer districts. Of course, the ideal is never actually achieved in the process of legislative compromise and the Texas legislature passed a law which fell far short of the ideal.

Under the new school finance law, a local tax effort of $.30 per $100 of market value of taxable property in the district during 1975–76 (and $.35 in 1976–77), approximately one-half the state average for maintenance and operation expenses, is used to determine the district's local share of the foundation school program cost for that district (called the "local fund assignment"). While the local fund assignment is calculated to determine the amount of state funds appropriated for each school district, the district is *not required* to exert that amount of tax effort to receive its state aid. The $.30 local tax rate is actually only a figure used on paper to determine the amount of state aid to which a district is entitled.

Furthermore, there is neither a lower nor an upper limit to the amount of local tax revenue that a district may raise under the new law. Consequently, we can expect that the current disparities in tax effort, ranging from $.02 to $1.50 per $100 market value of property, will continue to be large. Property rich districts will still be able to raise sufficient local revenues for education with little effort while property poor districts will find it necessary to make a comparatively high effort to raise less local revenue.

The new law does accomplish a very important change in the manner in which a district's ability to tax itself is determined. The state will no longer use the outdated and very complex economic index for determining a local district's ability to pay for education and will utilize a single-factor index of market value per pupil. Since market value is more closely tied to the actual "wealth" of a district than the Economic Index, the legislature has at least laid the foundation for possible future efforts to achieve taxpayer equity by more closely identifying the ability of districts to fund education.

Of course, successful identification of a district's true property wealth hinges on the validity of the set of market values which are adopted. The estimates of market value of property which will be used during the next biennium were compiled by Management Services Associates, Inc. (hereafter MSA) of Austin, under contract with the governor's office. While no detailed description of the methodology employed in their study has yet been released, a verbal description of the procedure for estimating market values was given to IDRA. The tax assessors in each school district in Texas were asked in a questionnaire to estimate actual market value of each type of real and personal property. Under the assumption that all jurisdictions undervalue real property by a minimum 20 percent, the total market value of all real property in all districts was increased by 20 percent. To that amount was added the value of all personal property (including automobiles), thus yielding an estimate of the total market value of taxable property in the district.

While these values have been identified as the best available estimates of true market value of property in all districts, there is reason for concern about their accuracy for a couple of reasons. First, they are self-reports by school districts and not objective appraisals of property. Secondly, the statewide total of taxable property for these estimates is $165 billion for 1974, far less than the "conservative statistical estimate" of $203 billion produced by a 1973 market values study of the Legislative Property Tax Committee. The fact is that district tax assessors generally tend to underestimate the value of property in their districts since lower property values will qualify districts for greater state aid. Furthermore, some district assessors tend to underestimate the value of property in their districts more than others. What is needed is a systematic statewide appraisal of property district-by-district.

The new law provides $5 million for the governor to "conduct a study to determine methods of allocating state funds to school districts" including "a determination of each school district's ability to support public education based on the value of taxable property in the district." The results of the study are to be reported to each member of the legislature no later than November 1, 1976, presumably to provide the market value estimates to be included in any school finance legislation that might be passed during the 1977 session of the legislature.

Unfortunately, the new law does not specify the type of procedures to be employed in the governor's study of market values. Conceivably, the governor might continue the practice of determining market values on the basis of distorted *self-reports* by school districts without actually conducting objective *appraisals* of property. Indeed, the Legislative Property Tax Committee found in its study that $5 million would provide only enough money to do appraisals of property in only a *sample* of school districts in the state.

Since proposed property tax reform legislation failed to pass before the legislature adjourned, the provision for a market value study by the governor included in the school finance bill is the only legislative provision available for possibly accomplishing property tax reform—however limited that reform might be with the funds appropriated.

Funding Equity

Funding equity would exist if the amount of money expended on each pupil were not a function of such arbitrary factors as where the child lives, the wealth of his district, or the wealth of his parents, but rather on educationally relevant factors such as the cost of an educational program which meets his or her particular needs. An ideal system of distributing educational revenues would provide for a state equalization program which would fully compensate for differences in ability to raise local revenues due to variations in taxable wealth.

The legislature chose not to adopt a weighted pupil formula for funding education according to program cost or need estimates and decided to keep the foundation school program basically intact with some small but significant changes.

Perhaps the most significant change, mentioned above, was the scrapping of the outdated economic index for determining a district's local share of the cost of the foundation school program and the adoption of estimates of market value of taxable property to replace it.

Very briefly, the system for distributing funds under the new law works something like this:

First, the amount of money necessary to operate a basic foundation program in each district is determined by computing the cost of various components of this program. The total cost consists of the sum of the approved minimum salaries of personnel allotted the district by a rather complex formula based ultimately on average daily attendance, current operating expenses (other than professional salaries) of $90 per pupil in ADA, categorical program aid for "educationally disadvantaged pupils," and driver education, and the cost of transportation services for each district.

Second, the amount of local funds assigned to each district is determined on the basis of $.30 per $100 market value of taxable property for 1975–76. No district's local fund assignment for 1975–76, however, shall be greater than the 1974–75 maintenance tax revenue, nor increase by more than 100 percent of the local fund assignment for 1974–75.

Third, the amount of state and county available school funds to be distributed to each school district on a per pupil basis is determined from the amount of interest available from the state's permanent school fund. For the 1974–75 school year, this amounted to $200 per pupil.

State aid allotted to a district under the foundation school program would be determined by subtracting the local fund assignment for that district and the available school fund from the total cost of the program in the district.

The new school finance law adds a couple of truly reform-minded provisions which cannot be found in the previous foundation school program. It provides equalization aid for program enrichment and categorical aid for the educationally disadvantaged. Unfortunately, the amount of funds appropriated for these reform provisions is not large enough to accomplish a truly equalizing distribution of state funds.

Some $50 million per year was provided for equalization aid to districts with local fund assignments of less than 125 percent of the state average. Estimates are not yet available on how many districts would qualify for equalization aid, but the number will surely be large given the cut-off point that was used, and the small amount of equalization money available will surely be spread thinly. The maximum equalization aid per pupil is $70 and that amount may be adjusted downward to keep the annual cost of the aid program within the $50 million limit.

Projections of equalization aid for school districts in Bexar County for 1975–76 are made in Table 1. All districts in Bexar County, with the exception of Alamo Heights, would qualify for some state equalization aid. The amounts, however, are disappointingly small. Edgewood ISD, often identified as the poorest of all districts in the state, would receive $61 per pupil. These amounts, however, will be adjusted downward if the district fails to match the difference between the state equalization aid and $70 per pupil, and/or if the total cost of the equalization aid exceeds $50 million statewide.

The large disparities in per pupil expenditures are further perpetuated under the new law by a "save harmless" provision that insures that no district in 1975–76 will receive less than 104 percent of its state aid in 1974–75.

Funds provided for educationally disadvantaged pupils amount to $40 per pupil in Title I programs. The district, however, must be receiving federal funds under Title I to qualify for state compensatory aid. The per pupil allotment for the educationally disadvantaged is only slightly more than the amount appropriated for driver education.

In short, the half-a-loaf of reform built into the new school finance law does not go very far toward achieving equity since it is so little distributed so widely.

Other important issues

In addition to the question of equity, other aspects of the new law which deserve comment include total effort, teacher salaries, and admissions and counting procedures.

Total Effort This was the year of golden opportunity for Texas legislators to pull their state out of 40th place in the amount of total expenditures per pupil for education since never before has there been a $2 billion surplus of funds in the state treasury. Most of the proposals for school finance reform would have utilized more than half of that surplus for financing education over the next biennium. For example, the Governor's Office of Educational Research and Planning proposed that $1.2 billion in new funds from this surplus be set aside over the next two years for financing public education. Heeding the governor's warning that he would veto any new bill and having spent most of the surplus on other matters, legislators passed a school finance bill in the waning hours of the session which appropriated $618 million in state funds, or half of what was originally proposed.

Teacher Salaries Since the total amount appropriated in the new law was a lot less than initially anticipated, the amount of increase in teacher salaries was less than teachers had expected. A $140 across-the-board increase in monthly teacher salaries brought the minimum salary for a BA level teacher to $8,000 per school year. This fell $2,000 short of what teachers were asking and they will no doubt be back next session (or even before) a lot wiser in the ways of political lobbying and lacking none of their previous motivation.

Admitting Students A slight change in the wording of the Texas Education Code is made in the new school finance law which may effectively exclude for the first time illegal aliens from public schools in Texas. Previously, if a child or his parents or legal guardians resided in a school district, he could attend school without questions asked about whether he was a legal or an illegal alien. Under the new law illegal aliens are explicitly excluded from public free schools. This provision might very well be challenged in court, but in the meantime, one can envision a new kind of truant-officer-in-reverse emerging, whose role it is to keep illegal alien children out of school.

Counting Students There was considerable talk during initial stages of proposed school finance bills that the state move toward a system of counting based on average daily membership (ADM), in place of the practice of counting in terms of average daily attendance (ADA). ADM produces a larger count than does ADA. There is considerable evidence that poorer school districts "lose"

> more students in ADA than wealthier districts during bad weather due to inadequate drainage and poorer transportation facilities. Since the ADA count largely determines a district's state aid, the poorer districts would stand to lose more state aid whenever it rains.
>
> It is clear that there are many issues yet to be addressed in regard to reforming school finance in Texas when the legislature meets again in 1977, not the least of which is whether or not the equity question brought to light in the *Rodriguez* case will ever be adequately answered.

The paradoxical characteristics of HB 1126, which introduced equalization features and then emasculated them through the "hold harmless" provision, failed to bring about the much sought school finance reform in the 1975 64th Session of the Texas Legislature.

By October 1975 IDRA had already initiated a study of the impact of HB 1126. Early findings indicated that the local expenditure flexibility provided by HB 1126, especially in the allocation and compensation of personnel units, was providing relief in most school districts. On the other hand, the amount of equalization funds, with a maximum of $70 per student, was too little to make a dent in disparities between high and low wealth districts.

Two months later, the IDRA study by Dr. Robert Brischetto and Dr. Dan C. Morgan found the impact of equalization aid even less than anticipated. The legislature had estimated that $50 million, the maximum appropriation for equalization aid, would be sufficient to provide a maximum of $70 per student. The change from the economic index to market values as a better measurement of local wealth increased the eligibility for equalization aid under the HB 1126 formula to $61.5 million, $11.5 million above the amount appropriated. In order to adjust the distribution to the maximum appropriation, the maximum amount of equalization aid was lowered to $57 per pupil. Eligibility criteria resulted in 655 districts being eligible for participation and included 86 percent of all pupils in the state.

To make matters worse, the determination of market values and the subsequent reduction in equalization aid was made after the beginning of the 1975–76 school year, with districts already expending funds on budgets calculated on the higher estimated amount of aid. Most of the anticipated funds had been allocated for personnel salaries and personnel units. Since contracts had already been entered into months before the identification of the shortfall in equalization aid, drastic cuts in all other areas had to be made to accommodate the overexpenditure.

IDRA concluded in the study that in attempting to obtain public support for the equalization aid section of HB 1126, legislators had included too many of the districts and students in the eligibility criteria with too small an amount of funds appropriated. The equalization impact of HB 1126 was minimal, with a $57 maximum in equalization aid when disparities in expenditures between highest and lowest wealth districts were running in excess of $7,000 per pupil. The average amount of equalization aid constituted only 2 percent of the average district budget. Our research showed that of the maximum $57 per pupil in equalization aid, only $23 came from the state, with $34 being provided in matching funds by local school districts. In the lowest wealth districts, $13 out of the maximum enrichment allocation of $57 had to be provided by local matching funds.

By the beginning of 1976, advocates were already looking at the 1977 65th Legislature for the much needed, long promised and anticipated school finance reform.

1977: THE 65TH LEGISLATURE

The cycle of school finance study groups, followed by legislative failure, followed by study groups, repeated itself in preparation for the 65th Legislature. House Speaker Bill Clayton named a nine-member house committee to seek alternatives to property taxation for the financing of Texas' public schools. Clayton named Tom Massey as chairman of the group and Dan Kubiak as vice-chairman. Other representatives in the group were Fred Agnich (Dallas), Roy Blake (Nacogdoches), Wilhelmina Delco (Austin), Frank Hartung (Houston), W.S. Heatly (Paducah), Camm Lary, Jr. (Burnet) and Ruben Torres (Port Isabel).

By 1976, taxation had emerged as a substantial issue paralleling the equalization issue in legislative attention. IDRA had anticipated this and in July 1975 had employed Craig Foster, one of the most knowledgeable persons in school finance in the state, to head a separate component, the IDRA Property Tax Project. This

IDRA project focused on property tax equity from 1975 through April 1982. The termination of foundation funding of school finance reform activities led to the discontinuation of this project, although with IDRA support and school district participation it became a separate entity, the Texas Association of Property-Poor Schools (TAPPS), an organization of school districts in the lowest one-third in taxable wealth of the then 1,070 districts in the state. TAPPS subsequently changed its name to the Equity Center and continued working with IDRA toward school finance reform through the *Edgewood* litigation and up to the present. The activities and services of the IDRA Property Tax Project are presented in a separate chapter in this publication.

On October 1, 1975, Texas Attorney General John L. Hill issued an opinion prohibiting school districts from charging fees for a variety of purposes. Actually, Commissioner of Education J. W. Edgar had ruled that such fees were illegal, but the collection of fees from students for driver education training, school supplies, instruction and lab fees, band uniforms, gym lockers and towels, club memberships and other co-curricular activities constituted such a substantial part of school finance, that the practice continued.

My years at Edgewood had demonstrated the hardship of such fees on economically disadvantaged students and the negative impact on school participation, student performance and school dropouts. IDRA had made a request of Texas Commissioner of Education Dr. Marlin L. Brockette that he seek an attorney general's opinion prior to our implementing a court suit. The decision by the attorney general made subsequent litigation moot, but added to the financial hardships of low wealth districts.

The State Board of Education vowed to withdraw accreditation and funding as a means of enforcing the attorney general's opinion, and further stipulated that the opinion had the effect of law unless changed by a court ruling. The Texas Association of School Boards and the Gulf Coast Association of School Boards attempted to persuade Gov. Briscoe to call a special session of the legislature to deal with the issue. Gov. Briscoe refused to do so, deferring the issue until the meeting of the 65th Legislature in 1977. Members of both organizations threatened to sue the Texas Education Agency and/or the attorney general in order to perpetuate the collection of fees from students. Such threats seem extremely ironic in that the two organizations would be willing to go to court to seek school funding from students, when neither of the two organizations had gone to such a length in attempting to seek school funding. Through the *Edgewood* litigation and subsequent legislation, the Texas Association of School Boards sided with the defendants in opposition to equitable funding for low wealth districts.

Litigation in support of student fees became moot when the threatening organizations were advised by legal counsel that the respective groups would have no basis for litigation since neither could show monetary damage. Litigation by school districts was out of the question since only two districts, Edgewood and San Antonio, had dared challenge the system of financing schools, and both districts supported the attorney general's opinion in spite of their desperate need for funds.

The disappointment of HB 1126 resulted in the formation of a new organization, Texans for Equitable Taxation. Their objective was a reduction of the inequitable burden on real property and the full assumption of the cost of the foundation school program by the state.

The stage setting for the 65th Legislature meeting in January 1977 was set in an article, "Texas School Finance: Past, Present and Future" published in the *IDRA Newsletter* in September 1976, three months before the beginning of the 65th Legislature.[58]

In this article, I review the problems in the Texas system of school finance and legislative action since the disposition of the *Rodriguez* court case. The article points out the failure of the 63rd Legislature, ". . . other than organizing a variety of study projects which would present recommendations in 1975."

I then review the 1975 session of the legislature and present its failure as a caveat for the 65th Legislature:

> The 1975 Legislature convened with school finance being the most important and overriding issue. Three distinct advocacy positions developed and continued throughout the session:
>
> 1. increased teacher salaries,
> 2. increased funds for basic costs, and
> 3. increased equalization.
>
> Bills were submitted early in the session with redrafts at regular intervals which promoted the various advocacies. As usually happens to reform legislation, proposals were shot down by divisive-

> ness and erosion. The once powerful Texas State Teachers Association appeared more than willing to sacrifice everything in exchange for a salary increase. School administrators stood pat on basic cost increases, and reformers argued for the retention of equalization measures.
>
> With this divisiveness all advocacies were easy prey for the erosion process. At each subcommittee meeting, in committee meetings, and in subsequent versions, original proposals were eroded down to mere concepts rather than realities.
>
> All advocacies were shortchanged. Teachers' salaries were substantially below the originally proposed level, and along with the increases for basic costs, required over $300 million in local tax monies to meet school district expenses. School districts paying above the minimum have been hard pressed to meet the new obligation to the school foundation program, and at the same time continue local salary increments. The $700 million in new state funds barely counterbalanced runaway utility and insurance costs. The equalization attempt amounted to trivial sums distributed to everyone, and with so many "hold harmless" provisions that the gap between rich and poor remained substantially the same.
>
> Thus, in late 1976 the school finance picture developing for the future seems surprisingly familiar. Teachers salaries, basic costs, and equalization again emerge as the basic issues.

The article criticizes the mess created in the change from economic index to market values in the determination of local ability to support educations. "Local market values . . . are riddled with errors and preferential treatment." IDRA's Property Tax Project identified discrepancies in 1,045 out of the 1,100 district market values used for determining 1975–76 and 1976–77 local share of the foundation program. Texas was unique among the states by the absence of any state regulatory or supervising agency to monitor, develop uniformity or audit local market value determinations.

IDRA took strong exception to the TSTA policy of seeking salary increases for teachers without regard to the inequitable salary differences among school districts. The article states:

> By the end of the current school year teachers will be very much aware of the inadequacy of the 1975 salary schedule, so we can be assured that the question will be on the legislative agenda next January. The overriding question will be: Will teachers address the other issues of basic costs and inequities or continue to follow the TSTA tunnel vision which so weakened their efforts in 1975? IDRA's main complaint is that the TSTA leadership continues to pursue the minimal salary issue without regard for interdistrict inequalities. Not only does TSTA support a membership of "have" and "have not" teachers, with salaries being determined by local school district wealth, but the TSTA position perpetuates the existence in Texas of a dual system of education in which as documented by IDRA research, wealthy kids are taught by high-paid teachers with enormous resources, while poor and minority kids are taught by low-paid teachers with little, if any, resources.
>
> The TSTA position that allows a teacher's worth to be dependent on who they teach tends to erode the professionalism of the profession.
>
> The question is: When will teacher groups in low wealth school districts wake up? It is disheartening to see these teachers banging their heads against brick walls all summer requesting salary increases from school districts on the brink of bankruptcy, and then mailing their meager pay raises in the form of dues to the state organization which consistently advocates wealth discrimination.

In retrospect, perhaps IDRA was somewhat unfair in its endless criticism of teachers' immediate concern with salary raises. Legislated increases in salaries went directly to the teachers. Increases in equalization funding were spent at the discretion of the school districts with teachers competing with band uniforms, coaching staffs and skyrocketing utility costs for the discretionary dollar. In subsequent financial windfalls as a result of equalization efforts, it was not unusual for the new funds to be expended on higher paid and additional administrators, rather than being passed on to the teachers. On the other hand, support for the determination of salary on the basis of what kind of student is being taught has never reflected kindly on the teaching profession.

In this article, IDRA again strikes out against enrichment as the basic flaw in the state system, and places enrichment equalization in the highest priority for state legislative action.

Funds for school facilities are similarly targeted for the 1977 session of the legislature. After a description of the problem, my article states:

> In the State of Texas there is nothing. No state loans, no state grants, no state share. Nothing. All costs have to be borne by the local school district. The effect of this deficiency is twofold: (1) Since property tax values for school districts vary per pupil from a four digit figure in some school districts to an eight digit figure in the wealthy districts, the amount of funds available for school construction ranges from millions in some districts down to virtually nothing in others; (2) The second effect is that all school construction in Texas is borne by the local property tax. With construction costs being what they are, it is no surprise that the homeowner is protesting.

The deplorably low level of expenditure for education in Texas is similarly criticized. This criticism ends with poignant insights into the result of the state's low investment in education, an early insight that was to be thoroughly validated by IDRA's research on school dropouts 10 years later and their impact on social and economic costs: "Past inadequacies in education in Texas have already produced grave consequences in terms of a shortage of a skilled labor force, adult illiteracy, underachievement, unemployment and quality of life. Texas has earned its place as the state with the highest dropout rate in the country."

The article ends with a negative commentary on the quality of educational and political leadership in the state, a theme that was to be repeated throughout the remaining history of school finance reform:

> Perhaps the saddest commentary on our state system of education is on leadership. A recent publication by the U.S. Commission on Civil Rights has cited the "negative quality of education leadership" as a major hurdle to progress in desegregation efforts. The school finance situation in Texas suffers from the same negative leadership.

Just before the beginning of the 65th Legislature, IDRA received a grant of $55,456 from the National Institute of Education to conduct a study of school finance legislation in Texas and five other states—California, Colorado, Florida, Michigan and New Mexico. The study, *Minorities, the Poor and School Finance Reform: An Impact Study of Six States* by Dr. Robert Brischetto and David Vaughan, provided extensive information on alternatives for a reform of the Texas system to the 1977 and 1979 sessions of the legislature.[59]

Even more important, a review of school finance reform initiatives in other states, especially California, gave important insights on what not to do in reform efforts. The California Assembly had expended billions of dollars in dysfunctional responses, only to have the court in *Serrano v. Priest* send them back to the drawing board in search of equity and in search of new money to fund new approaches. In spite of loud and frequent warnings from IDRA, Texas was doomed to repeat the past mistakes of California, spending billions in non-equitable solutions and then facing severe financial constraints in enacting solutions compatible with the *Edgewood* litigation.

The 1976 calendar year ended with a December article by Albert Cortez calling for legislation to address the inequities in school facilities.[60]

Fritz Mosher from the Carnegie Corporation and Jim Kelly from the Ford Foundation facilitated another generous grant of $480,00 to IDRA for us to continue our school finance and property tax activity for at least three more years.

The 65th Legislature finally convened in January 1977. As in the past two legislative sessions, there was no shortage of school finance proposals for legislative consideration. The carte du jour listed six major proposals with their sponsors:

HB 1113: State Board of Education
HB 750: Governor's Office
HB 147: House Alternatives Committee (Massey)
HB 980: Texas School Administrator's Council
HB 613: Texas State Teachers Association
SB 777: Sen. Oscar Mauzy

By this time, IDRA had developed sophisticated computer capabilities that allowed the organization's researchers to analyze the proposed legislation and perform simulations which would indicate the financial implications of the various proposals in the bills for each school district in the state. An overview of such an analysis was published in the IDRA *Newsletter* in January 1977, at the very beginning of the legislative session.[61] The article is organized around the five issues which most directly affected the disparities among school districts in varying wealth categories: (1) the determination of local wealth, (2) the determination of a district's ability to support the local share of the cost of education programs, (3) equalization of enrichment funds, (4) funds for compensatory education, and (5) funds for capital outlay:

> The beginning of the 1977 Legislative session faces equitable funding of the state's public schools as one of the most critical tasks to be undertaken in this session. In spite of the fact that HB 1126 made substantial changes in the method of funding public schools, there is an extensive concern that it fell far short of its mark in the area of equality of educational opportunity.
>
> A number of proposals are being recommended to change further the method of financing public education. In this article, both proposed legislation and legislative recommendations will be summarized and analyzed, in order to determine their impact for districts of varying wealth characteristics and the extent to which these measures relate to equality of educational opportunity. The aspects of the legislation which most directly affect the disparities among school districts in varying wealth categories are those which relate to:
>
> 1) determination of local taxable wealth (market values),
> 2) determination of a district's ability to support the local share of education programs,
> 3) equalization of enrichment (local leeway) funds,
> 4) funds for compensatory education, and
> 5) funds for capital outlay (monies for school construction, equipment and maintenance).
>
> Since these five aspects have the greatest impact on school district disparities, our analysis and discussion of proposed legislation and legislative recommendations will be limited to these areas. Proposals analyzed are those which have been made available to the legislature by the State Board of Education, the governor's office, the House Alternatives Committee (Massey bill), the Texas School Administrators Council (TSAC), and the Texas State Teachers Association (TSTA). A quick-reference chart is provided on page 5 to facilitate review of the proposals.
>
> **Issue #1—Determination of local taxable wealth**
>
> *Present Provision* HB 1126 provided for the determination of local taxable wealth based on self-reports of school districts. The self-reports were made to Management Services Associates (MSA) under contract from the governor's office to estimate the market value of each school district in Texas. MSA's estimates of market values were accepted by the 1975 Legislature and became the basis for determining local fund assignments for the 1975–76 and 1976–77 school years.
>
> Also authorized by HB 1126 was $5 million to perform a comprehensive study of taxable property in Texas and to produce a new set of market values for use during the 1977–78 school year and thereafter. The study, conducted by the Governor's Office of Education Resources (GOER) recommended a set of market values which have been accepted as the basis for determining the local fund assignment in four of the five proposals being discussed in this article.
>
> *Proposed Changes* There has been public concern over inequities in the reporting procedures among various school districts. Since a lower value assigned to taxable property by a school district results in a lower share of the cost, it is tempting for a school district to underestimate the value of local taxable property.
>
> Recommendations submitted by the governor's office, TSAC and TSTA propose changes in this area. TSAC proposes the establishment of the School Aid Equalization Commission, while the governor's office and TSTA propose the establishment of a School Tax Assessment Practices Board, training and certification of district tax assessors, the setting of standards for school tax offices and for the reporting of a district's market values, and the inclusion of district tax assessors in the state compensation plan.

Another piece of legislation proposed by Rep. Peveto of Orange County involves a thorough revamping of the taxation system including school finance.

Analysis Initial reactions to all recommendations have been favorable since all proposals have the potential for bringing about greater uniformity in determining tax values on similar properties in school districts across the state. Proposals by the governor's office and TSTA are limited in that the effectiveness of the measures to bring about greater appraisal uniformity center on the effectiveness of the School Tax Assessment Practices Board.

Whereas the governor's proposal would require that all property appraisals for school taxation purposes be conducted under the governance and standards of the School Tax Assessment Practices Board, the Peveto bill would seek to standardize appraisal procedures for all taxing entities, including counties, cities, and special districts. The Peveto bill is broader in scope than the governor's proposal, not only because it includes more governmental entities, but also because it creates a new appeals system for taxpayers, rewrites key definitional elements of what property shall be taxable, and codifies a new listing of what property must be included on all tax rolls.

Peveto's much more comprehensive program has the greatest potential for bringing about improvements in the state's overall property taxing practices. Tax experts believe that the Peveto bill appears to incorporate the necessary reforms in property valuation which are needed to achieve a more equitable system of school district property taxation in Texas.

Issue #2—Determination of a district's ability to support the local share of education programs

Present Provision: A school district's share of the foundation school program (FSP) is determined by multiplying the total taxable value in the district by an index rate of $.35 per $100 valuation for the 1976–77 school year.

Under present legislation no local fund assignment in 1976–77 could exceed 150 percent of the 1975–76 maintenance tax revenue nor increase by more than 200 percent over the 1974–75 local fund assignment.

Proposed Changes: Four of the proposals recommend the following changes in the index rate to be used in determining the local fund assignment.

18 cents per $ 100 GOER market values—State Board of Education
9 cents per $ 100 GOER market values—governor's office
17 cents per $ 100 GOER market values—TSAC
15 cents per $ 100 GOER market values—TSTA

The House Alternatives Committee (Massey bill) proposes elimination of the local fund assignment and proposes 100 percent state funding of the foundation school program.

Analysis Based on preliminary analysis of a sampling of school districts it was found that although there was a savings from reductions in the local fund assignment, the amount of savings per student tended to favor wealthier districts. The reason for this tendency is that in the past, wealthier districts were responsible for larger percentages of the local share of the foundation school program cost. Under the proposed formulas, the state will pay a larger percentage of the foundation school program, even for the wealthier districts. Thus, although reductions in local fund assignments can be initially viewed as a positive development, those concerned with equality of opportunity must consider the potential effect which differing amounts of savings may have on the resources available to poor and wealthy districts.

Issue #3—Equalization of enrichment (local leeway) funds

Present Provision HB 1126 set aside $50 million annually for enrichment equalization which was intended to be distributed among all but the wealthiest districts in the state. Three restrictions were included: (1) the guaranteed state aid cannot exceed $70 per pupil, (2) districts must raise local funds above their local fund assignment to make up the difference between state equalization aid and $70 per pupil, and (3) if the total statewide cost of the equalization program is more than the amount appropriated by the legislature, guaranteed aid will be reduced and distributed proportionately.

Proposed Changes All of the proposals drafted to date have included provisions for increasing the present level of equalization aid for program enrichment. These proposed increases vary from a low of $125 per pupil (TSAC) to the $250 per pupil maximum proposed by the State Board of Education.

The governor's office proposes that equalization aid per pupil be raised to $210, and that eligibility be limited to only those districts who fall below the state's average market value of $93,000 per ADA.

The House Alternatives Committee proposes that equalization aid be increased to $150 per pupil and that eligibility be limited to those districts below $60,000 market value per ADA. It also provides for an additional $25 per pupil for districts below $20,000 market value per ADA.

TSAC proposes an increase to $125 per pupil for districts below the state's average market value with an additional $25 per student for districts in the lowest wealth quartile.

TSTA proposes an increase of $210 per pupil eligibility limited to districts below 110 percent of the state average market value.

Analysis The governor's office, the TSTA, and the House Alternatives Committee appear to have the greatest potential for providing and targeting additional equalization monies to those districts in greatest need.

It should be noted that the additional resources are limited and do not fully equalize educational opportunities. Even the $250 per pupil maximum proposed by the State Board of Education will not bring districts up to the prior year's average state per pupil expenditure. Also, limitation provisions are weak and allow wealthier districts to channel additional resources gained through the proposed reduction or elimination of the local fund assignment into their local enrichment program.

The proposed equalization aid will *not* close effectively the expenditure gaps which currently exist, but at best it will maintain the disparities at near present levels. The chart below indicates the amount of per pupil dollars to be raised by a sampling of districts under the five proposed recommendations.

Issue #4—Funds for Compensatory Education

Present Provision Each school district which receives federal compensatory education aid is eligible to receive an allotment of $40 for each educationally disadvantaged pupil. However, if the total amount requested exceeds $25,400,000 per year, each district's allotment will be reduced proportionately. Beginning with the 1976–77 school year, a coordinated plan for the use of federal and state compensatory education funds must be submitted by districts to the state education agency.

Proposed Changes An area which will affect many poor school districts is the impact which the proposed legislative measures will have on the funding of compensatory education. Three of the five proposals, i.e. the governor's office, the State Board of Education and the House Alternatives Committee, recommend the elimination of compensatory education funding. The State Board of Education and House Alternatives recommend the channeling of these funds into equalization aid.

Analysis The channeling of compensatory education money to the equalization aid fund amounts to changing the same monies from one pocket to another. More importantly, school districts currently receiving compensatory education funds should recognize that this proposed transfer of funds will require the raising of a local share for money which was previously received at no cost to the district. Because of the negative implications which can result from eliminating or rechanneling these funds a third option, maintaining the current program, may be preferred.

Issue #5—Funds for capital outlay (monies for school construction, equipment and maintenance)

Present Provision None

Proposed Changes None

> *Analysis* In failing to address the issue of state support for a capital outlay program which includes monies for site acquisition, school construction and equipment, and maintenance of the school plant, the bills and recommendations fail to address equalization needs.
>
> Efforts aimed at eliminating differences in per pupil expenditures through enrichment equalization, and greater state support of the basic school program may be fruitless if inequities in school facilities are left in their presently deplorable state. The state's support of all other aspects of the educational program, while excluding expenditures for capital outlay, can be equated to providing all the interior furnishings and decor, but forgetting to build the house which must ultimately hold them. Continuing to burden schools with 100 percent of the cost of school construction will only serve to perpetuate existing disparities in school facilities among the state school districts.
>
> One provision that may alter the current disparities is an independent piece of legislation introduced by Rep. Bob Vale of San Antonio which provides state funds for capital outlay expenditures.
>
> *Conclusions* Although all the preliminary proposals contain some elements which will benefit many individual school districts, *all* fail to effectively reduce the current disparities that are characteristic of the state's present school financing system. In effect, the various measures propose the channeling of additional funding into the present system and will tend to benefit all school districts to varying degrees. Although commendable in their potential for increasing state aid to education, the issues raised in the *Rodriguez* case in which the Texas system was criticized as being inequitable, are not adequately addressed. It remains to be seen if these measures will be revised, or whether additional legislation will be introduced which will more effectively address these issues.

Sen. Mauzy's excellent bill, SB 777, is not included in this analysis, but is reported separately in a special IDRA *School Finance Bulletin* by Leo Zuñiga, published in March 1977.[66] Mauzy's bill was the only one introduced that addressed adequately the question of equity in school finance. SB 777 also had many positive features, including a teacher salary increase and providing the much needed funds for categorical programs, such as driver's education and compensatory education. It proposed $117 million for equalization aid, an increase of $67 million and up to $200 per pupil in eligible districts, to narrow the differences in funds available between high and low wealth districts. Perhaps the most attractive part of Mauzy's bill is that the large increase in equity, teacher salaries and categorical programs could have been enacted at a cost of less than $900 million, a very reasonable amount compared to the billions that were to be expended in dysfunctional responses.

It is regrettable that Sen. Oscar Mauzy's leadership in school finance reform did not receive sufficient support in the legislature to bring about the necessary changes in the system. However, Sen. Mauzy had the final word as a member of the Texas Supreme Court during the successful *Edgewood* litigation.

During the 1977 legislative session, Jackie Cox from Austin joined IDRA's school finance staff. Ms. Cox was brilliant, knowledgeable, dedicated and a strong advocate of educational equity. In March 1977 she researched the status of the various school finance bills in the 65th Legislature. Much to our dismay, her studies indicated a substantial erosion of educational equity in the major school finance bills under consideration. The five major proposals reviewed by IDRA two months earlier had been modified so that their main thrust was to provide additional state funds to property rich school districts at the expense of the poor and average wealth districts. The erosion in equalization came about by proposed lowering of the local fund assignment, the local share of the cost of the foundation school program. Whereas across the board decreases in local shares produced modest savings for low wealth districts, the decreases provided huge savings for high wealth districts which had been assigned a larger percentage of the total cost. Increasing the state share of the foundation program in the proposed legislation would produce $6 per pupil in savings for a low wealth district. In turn, it would produce $600 per pupil in savings to the richest districts.

Unfortunately, school district administrators tended to be very provincial and easily impressed with the small savings in the proposed legislation. They viewed the huge savings for rich school districts as something not of their concern, oblivious of the consequences, that the local savings in rich school districts would be replaced with state money, making a considerable dent in the amount of state assistance available to low and average wealth districts, or if state assistance to low wealth districts remained constant, the increased subsidy to high wealth districts would come from a drop in the amount of equalization aid.

Cox pointed out in specific examples from simulations that the proposed reduction in the local share in proposed legislation, such as the governor's bill, the wealthy Deer Park School District would gain $316.19 in state aid, while Edgewood would gain $183 in equalization aid. The administrator's council bill would provide $182 to Deer Park and $165 to Edgewood. In short, with the exception of Mauzy's bill, all of the proposed legislation funneled "reform" funds to higher wealth districts. Unbelievable as it may seem, from 1975 to 1985 the bulk of most of the proposed, and all of the enacted legislation provided more funds for high wealth than for low wealth districts.

As reported by Cox on April 1, 1977 in the IDRA school finance bulletin,[63] House Education Committee Chairman Tom Massey of San Angelo shifted priorities from equalizing wealth disparities to providing property tax relief. Massey's commitment to property tax relief withered as the amount of property tax relief of $1 billion was quickly was reduced to less than $300 million in Massey's committee. Sen. Mauzy stood firm with his bill providing substantially more new money to poor districts, while requiring rich districts to pay an increased local share.

Cox observes, "Between the two extremes [Massey and Mauzy] are half-measure compromises that offer so little tax relief that average homeowners will never see it, and so little new money for education that programs will not be improved."

Late in the legislative session, Rep. John Bryant of Dallas proposed legislation which would have provided $1 billion for property tax reform, and $1.3 billion for educational expenditures compatible with IDRA's five priorities. Bryant proposed that the necessary funds for his proposed legislation be obtained by an oil refineries tax, 70 percent of which would be paid by consumers out of state.

The legislative impasse continued. Robert Brischetto published another article in the *IDRA Newsletter,* again pointing out the flaws in the state system of school finance, its impact upon children, communities and the state, and imploring the legislature to avoid the pitfalls in the 1975 session and address the issues facing the current session.

The lack of decisive action in the legislature promoted IDRA to bring together an awesome group of national leaders in school finance reform, hoping to provide direction for the wandering Texas Legislature. The group included attorneys Paul Dimond from the Harvard Center for Law and Education; Paul Tractenberg from Rutgers University in New Jersey; Norman Chachkin from Washington, D.C.; David Long from the Lawyer's Committee on Civil Rights; John McDermott, trial attorney for *Serrano v. Priest,* the California school finance case; Peter Roos and Joaquin Avila from the Mexican American Legal Defense Education Fund; Betsy Levin from the National Institute of Education's Education Equity Group, Jim Herrmann from Texas Rural Legal Aid; and Garry Ratner from the Greater Boston Legal Service. Other participants included Mike Hodge from the National Urban Coalition, Carolyn Carrasco from the Colorado Chicano Education Project, Bob Singleton and Hattie Harris from the California Education Reform Project, Fritz Mosher from the Carnegie Corporation and all IDRA staff.

The brainstorming produced considerable helpful information on the Texas legislative agenda, but the participants' skepticism of the legislature's willingness to face and address the equity issue led to the conference moving to the development of litigation strategies which would be implemented seven years later.

After many days of extensive debate, the House passed Committee Substitute for HB 750 (CSHB 750), a revision of the governor's bill. The bill did provide $75 million per year in increased equalization aid, a maximum of $210 per pupil for districts in the lowest quartile. On the other hand, in spite of the persistent IDRA warnings, the bill reduced the amount which school districts were required to provide as local share, thereby releasing vast amounts of money in the wealthy districts for local enrichment of the foundation program. The increased equalization aid for poor districts, and the increased state subsidy for wealthy districts offset each other, leading Albert Cortez from IDRA to report that CSHB 750 would maintain the status quo in funding disparities between poor and rich school districts. Cox calculated that the measure would provide the very poorest school districts an average of $179 in new state aid; it would provide districts five times richer an average of $180 per student.

The Senate then passed a much different school finance bill which concentrated resources in school districts with the greatest need. The Senate emphasis on using available state money to meet the most pressing educational needs conflicted sharply with the House's emphasis on reducing the local district funding of the educational program. Other conflicts in the two bills included a Senate teacher salary increase which the House found too high, the Senate provision for creation of a board to monitor tax assessment practices in school districts, and the amount to be appropriated for the maintenance and operation of the schools.

In an IDRA *Newsletter* article for the June 1977 issue, Albert Cortez describes the last days of the 65th Legislature:[64]

> Deadlocked over the local share and teacher salary issues, the Senate and House met two to three times daily in an attempt to work out their major differences. It was not until 11:30 p.m. on May 30th, thirty minutes before the session ended, that a so-called compromise bill was reported out of the conference committee. The "compromise," in essence, was a modified version of the House school finance bill, which a majority of Senate conferees reluctantly approved rather than having no bill at all. To no one's surprise, House members, confronted with a final version of a bill they had not been given an opportunity to read, and unable to determine what its effect would be on local school districts, failed to provide the two-thirds majority vote required to suspend the rules requiring a two hour review period on revised legislation. On the Senate side, Sen. Mauzy, recognizing the inadequacies of the measure which came out of the conference committee, spoke against the bill for the final minutes of the session.
>
> On the following day, Gov. Briscoe announced that a special session would be called (perhaps by mid-July) to reconsider the state's major school finance legislation. The major issues to be considered will most likely include:
>
> (1) teacher salaries,
> (2) methods for determining local district property wealth,
> (3) processes for calculating a district's local share of their educational program costs,
> (4) funds for increasing state equalization aid,
> (5) monies for other categorical areas such as transportation, operation cost allotments, education service centers and driver's education.
>
> Local school board members, superintendents, teachers and community members will have an opportunity to provide input into the process by contacting their respective state representatives and senators, House and Senate education committee members, and testifying before these committees on the major pieces of legislation which will be introduced.

The special legislative session was called by the governor in the summer of 1977. The session was a repetition of the regular session with advocates of property tax relief pushing for a disequalizing reduction in the local cost of the foundation program, and advocates of equalization pushing for increased equalization aid. The new law, Senate Bill 1, provided an increase in equalization aid of $180 million a year for low and moderately low wealth districts and a $133 million reduction in the local share which largely benefitted rich school districts. This compromise was best reported by the *New York Times*, who found it hilariously funny. Demonstrating a lack of sensitivity, understanding or appreciation for the Texas mentality, the *Times* reported that the Texas Legislature appropriated millions of dollars for equalization and then managed to disequalize what they were trying to equalize in the first place. One cannot help but wonder how the *Times* would react to the Texas Supreme Court dictum 10 years later which specified that all districts in the state must have equal funds, but when all districts have equal funds, some may have more.

Both Albert Cortez and Leo Zuñiga from IDRA's school finance component concluded that "the new school finance law incorporates some improvement to the existing scheme, [but] it does not initiate any significant progress toward solving the myriad of difficulties confronting the state's school finance system." IDRA again expressed the belief that the courts would have to resolve the problem.

As an aftermath of the 65th Legislature, in November 1977 Leo Zuñiga reminded the IDRA readership that school construction was not even addressed by the legislature,[65] and Craig Foster continued to find scandalous discrepancies in local property taxation.

Opponents of the property tax saw the increased state share of the foundation school program as a major victory and initiated another move toward full state funding. IDRA would have been happy for the state to provide all of the funds for education, thereby establishing a perfectly equitable system. However, proponents of full state funding proposed that local taxation be continued to pay the cost of school construction and provide money for the enrichment of the local educational program. In November 1977 Albert Cortez again lashed out at the proposal, again meticulously explaining that the removal of the general equalizing local fund assignment would result in increased disparities between low and high wealth districts.[66]

In a February 1978 article, Cortez again raised the question of teacher salary disparities.[67] The article was based on a publication by the Texas Research League, *Benchmarks for 1977–78 School District Budgets in Texas*, and Cortez notes that during the 1975–76 school year, 15 percent of the public school teachers in Texas were being paid the minimum salary established by the legislature. Most of these teachers worked in low wealth school districts. In comparison, 11 percent of the teachers were receiving local increments in excess of $2,000 above the minimum schedule, with 3.4 percent receiving $3,500 and more in local supplements. Payment of $3,500 above the minimum salary schedule was very significant considering that the base pay for a beginning teacher with a B.A. degree in 1976–77 was $8,000. A supplement of $3,500 was 44 percent above what a comparable teacher in a low wealth district was earning. These supplements were usually accompanied by higher fringe benefits, lower pupil-teacher ratios, fewer students with special needs, air conditioned classrooms, modern media and learning centers, funds for field trips, materials and equipment which made performance more enjoyable and rewarding.

Early in 1978 IDRA published six publications focusing on school finance and property tax issues. These publications were designed to give the layman brief explanations and discussions of present problems which should be addressed in future legislation. The six publications made available at no cost were:

1. *Financing Public Schools in Texas: A Primer:* A revised and updated version of the original primer written by José A. Cárdenas and Rosemary Catacalos, and published by TEE/IDRA in 1974.[68]
2. *The Texas Property Tax System: Who Wins and Who Loses:* A new booklet by Jackie Cox and Craig Foster providing a look at the Texas property tax system, its problems, and the effect on homeowners, businesses and school districts.[69]
3. *Money Available for Education in Texas School Districts:* This publication written by IDRA staff member Sam Lester compares school expenditures in low, average and high wealth districts, urban and rural, large and small throughout the state.[70]
4. *Property Taxes and the Financing of Texas Public Schools:* In this book, Albert Cortez focuses on district wealth and taxes. It depicts what IDRA called the "Texas Tax Paradox," with low wealth districts taxing at high levels and producing little revenue, and high wealth districts taxing at low levels and producing large revenues.[71]
5. *School Construction: A History of State Neglect:* The booklet by Leo Zuñiga explains how school construction is funded in Texas and the problems created by the absence of state aid.[72]
6. *Citizen Involvement in Education:* A guidebook by Leo Zuñiga for community groups interested in local education. Written in a cookbook style, it provides built-in formats for parent and community involvement in the schools.[73]

In May 1978 Albert Cortez published an article in the IDRA *Newsletter*,[74] again comparing Texas school expenditure performance with the other states based on the National Education Association's 1977 *Rankings of the States*. Cortez notes that Texas has slipped to 44th among the 50 states in educational expenditures, with only Mississippi, Tennessee, Georgia, Louisiana, Arkansas and South Carolina spending less per pupil. The average per pupil expenditure for Texas was $1,154, less than 75 percent of the national average and less than half of the highest expending states of Alaska (39 percent of $2,938) and New York (49 percent of $2,333).

Although Texas had been increasing educational expenditures, the increase pales in comparison with other states. Eight states, Mississippi, Nebraska, Illinois, Iowa, Wisconsin, Pennsylvania, Alaska and Maine had increased expenditures of from 202 percent to $239 percent in the last 10 years, whereas Texas ranked 33rd among the 50 states with a 10-year increase of only 161 percent.

Lest the reader conclude that Texas' poor showing in educational expenditures was attributed to state wealth, Cortez points out that at the time that Texas ranked 44th in school expenditures, it ranked fifth in personal income (behind California, New York, Illinois, and Pennsylvania).

In response to the taxpayer's revolt in California, Gov. Dolph Briscoe issued a call for a special session of the state legislature to deal with a variety of property tax issues. The Texas response in opposition to taxation is confusing. California had very high taxes and perhaps needed some amount of tax relief. Texas had very low taxes, but the success of proposition 13 in California led to a similar initiative in Texas. California tax opponent Howard Jarvis gladly came to Texas and provided his experience, expertise, and support to a similar effort in this state, an exceptional example of a man with a solution in search of a problem.

The following is a list of the hodgepodge of tax legislation addressed by the special session:

- the repeal of the state sales tax on residential utility bills;
- increasing the exemption on the state inheritance tax from $25,000 to $200,000;
- a constitutional amendment placing a ceiling on state and local government spending;
- a constitutional amendment requiring a two-thirds vote of approval by both houses of the legislature for the enactment of new or additional *state* taxes, and a two-thirds vote of approval by local governing bodies for the enactment of new or additional *local* taxes;
- a constitutional amendment to allow agricultural property and timberland to be taxed on the basis of productivity rather than full market value;
- a constitutional amendment setting the homestead exemption for local school district taxes at $10,000, plus an additional $10,000 for homeowners over 65 years of age; and
- a constitutional amendment giving voters the rights of initiative and referendum to mandate legislative action to raise or lower taxes.

The special session of the Texas Legislature did not have a significant impact on school finance. The legislature enacted HB 18 a "truth in taxation law," described by Craig Foster as the muddled and incongruous outcome of the pressure-cooker atmosphere of the special legislative session. HB 18 outlined the procedures that each local taxing unit must follow before it can set the tax rate to insure that the real tax rate does not violate the maximum increase allowed without a public hearing.

The special session also produced HJR 1, proposed constitutional amendments to be considered by the electorate the following November. Craig Foster also describes HJR 1 as a mixed bag:

> HJR 1's authors and proponents have declared that it is a responsive and balanced product, offering meaningful tax relief and spending restraints where they are most needed, providing more or less equal benefits to urban and rural taxpayers, and paving the way for major property tax reform. HJR 1's principal political opponents have declared that it is phony, fraudulent, empty, inadequate and reactionary.

Regardless of the differences of opinion between the supporters and opponents of HJR 1, in the November election the constitutional amendment was approved by 84.4 percent of the voters.

Incorporated into the 1977 school finance legislation (SB 1) was the inevitable appointment of a "Legislative Commission on Public School Finance," which was to study the issues and make recommendations for the 1979 session of the 66th Legislature.

The commission was comprised of three state senators, three representatives and three citizens: Sen. W. E. Nelson of Midland, Sen. Oscar Mauzy of Dallas, Sen. Gene Jones of Abilene, Rep. Hamp Atkinson of New Boston, Rep. Tom Massey of San Angelo, Rep. Wilhelmina Delco of Austin, Dr. Billy Reagan of the Houston ISD, President Carolyn Harrell of TSTA, and Carrol Chaloupka of the Texas Farm Bureau.

The group had its usual hearings and consultations with state and national experts in the field. The most significant development was the commission's employment of two research groups, the Education Commission of the States (ESC) and the National Council of State Legislatures (NCSL) to conduct separate studies of the state financing structure.

1979: THE 66TH LEGISLATURE

The 66th Legislature convened in January 1979. Since the 65th Legislature had done a little of everything and a lot of nothing, it was not surprising that the agenda for the 66th Legislature was not much different than for the previous session. The highest priorities in the new session focused on five school finance topics: (1) equalization of revenues available to schools, (2) taxpayer equity, (3) teacher salaries, (4) funding of special programs, and (5) determining the local shares of the school program.

Early in the session the studies by the National Council of State Legislators and the Education Commission of the States requested by the Legislative Commission on Public School Finance appointed by the previous legislature were made public.

As reported by Albert Cortez, the two study groups found that although the state had succeeded in the upgrading of its basic program, all other aspects of the school funding situation had remained relatively unchanged. Between 1975 and 1978 there was an increase of 44 percent in school district expenditures, excluding capital outlay.

The 44 percent increase in educational expenditures had fallen short of achieving either spending or taxpayer equity. NCSL used a coefficient of variation to assess the degree of equalization and found that the coefficient had increased from .770 to .804, indicating that inequalities had increased between 1975 and 1978.

One of the most challenging pieces of legislation proposed for the 66th session was an education bill conceptualized by Rep. Ron Coleman of El Paso. In his proposal, the trend toward state assumption of the foundation school program would be halted by the use of a $0.15 per $100 valuation local share from school districts, with the state providing 85 percent of the total cost. Coleman's proposal provided for a 6 percent teacher salary increase, slightly more than the 5.1 percent in the state budget recommendation, but still nowhere near the 20 percent increase in the cost of living index since the last salary raise. The proposal also proposed an increase in the maintenance and operation allocation form $115 to $155 per pupil.

Perhaps the most interesting and promising part of Coleman's proposal was the abandoning of the existing equalization allocation in favor of a power equalization approach. Each 1 cent of additional local effort would be matched by the state to produce the same revenue as a 1 cent tax levy on the state average property wealth.

During this legislative session, IDRA established a "Hotline" in Austin to provide information to school district personnel on the impact of the various school finance bills.

Also during this legislative session, IDRA continued to provide information on the growing number of states in which the systems of school finance were being declared unconstitutional. IDRA was warning the legislature that a failure to implement an equitable of system of school finance could lead to litigation resulting in a court-ordered equitable system.

Although Rep. Coleman's bill never made it through the various subcommittees, committees and floor debates, the 66th Legislature did enact SB 350, which increased the small amount of school finance reform in previous legislation. According to a report by Albert Cortez, the following were the salient characteristics of the bill:

> The bill provided for the infusion of approximately $1.174 billion into state elementary and secondary public school programs, with the majority of funds being distributed in proportion to district property wealth.
>
> In essence, the bill:
>
> - adjusts the state estimates of taxable property wealth to reflect the exemptions which are provided in HB 1060, the newly passed property tax relief bill;
> - increases equalization aid by $152 million during the next biennium, raising the maximum per pupil entitlement to $275 in 1979–80, and to $290 per pupil in 1980–81;
> - increases compensatory education funding by $48 million; revises the distribution formula so that funding is based on the number of free lunch eligible pupils; requires school district assessment of basic skills in selected grades; and requires the documentation of efforts to provide remedial services to students who are underachieving;
> - provides $5 million for funding demonstration programs for gifted and talented pupils;
> - provides supplemental funding for school districts experiencing significant growth in enrollments through a "fast-growth" allotment;
> - provides significant increases in maintenance and operation allotments to help school districts deal with spiraling operating costs;

- modifies the state transportation funding formula to one based on linear density which considers the number of pupils transported and the number of miles traveled, thus bringing state funding closer to actual costs; also provides state funds for transporting, *within* the general two-mile limit, pupils who must cross hazardous areas to get to their schools;
- incorporates minimum aid hold harmless provisions for all school districts;
- rewrites the state's special education provisions to improve delivery of services to handicapped pupils, and to bring state law into compliance with federal law; and
- increases teacher salaries by 5.1 percent and adds step 14 to the state salary schedule.

Estimated increases for selected program elements incorporated in SB 350 are as follows (in millions):

Salaries (5.1 percent increase)	$324
Small school districts	12
Minimum aid	10
Special educationn	—
Transportation	29
Compensatory education	35
Operating cost allotment	97
Local Fund Assignment	259
Equalization aid	152
Fast growth formula	5
Gifted and talented	5
Community education	3
Teacher retirement contribution	46

Although SB 350 did not come close to resolving inequities in school finance, it did provide a step in the right direction. However, SB 350 perpetuated the Texas legislative tradition of the Lord giving and the Lord taking away. Increased aid to low wealth school districts to reduce disparities was partially offset by increased aid to the wealthiest districts. The poorest school districts received an average of $132.70 in increased state aid, but the wealthiest districts in the state received $44 in additional state aid, thereby eliminating one-third of the effect on disparities. Save harmless provisions, which assured wealthy districts of continued favoritism, similarly watered down the impact of the increased equalization aid.

The new competency testing program is another example of the state giving and taking away. SB 350 mandated the most comprehensive student competency testing in the history of the state. The Texas Assessment of Basic Skills (TABS) was to be administered to all public school fifth and ninth graders in the state to determine proficiency in reading, writing and mathematics. Unfortunately, the legislature failed to provide funds for this assessment. Early in 1980 the State Board of Education, facing an accumulated cost of nearly $2 million in the administration of the test and expecting higher costs in future years, decided that since the test prescription appeared in the compensatory education section of SB 350, the cost should come from compensatory education. Some of the students tested were participating in compensatory education programs, but most were not. Funds for the administration of the test were skimmed off the top of compensatory education allocations, even for tests administered in school districts that had little or no compensatory education students. This struck quite a blow for poverty students, with poverty determined by participation in the federal free and reduced price lunch program. Since IDRA had originally determined, and consistently revalidated, that poverty students were most abundant in low wealth districts, the failure of the legislature to finance the testing program, and the decision by the Texas Education Agency to fund it from compensatory education programs, led to a substantial loss in the new equalization funds for low wealth districts provided by the last session of the legislature. The high wealth districts with little or no poverty students would incur no expense for the comprehensive testing of their students.

Educational decisions so detrimental to economically disadvantaged children are easy for political and social entities to make, since they affect the segment of the population which is politically disenfranchised and has the least advocacy in the state. Since IDRA was created to provide the much needed advocacy for minority and disadvantaged populations, it was no surprise that the organization mounted a concerted effort in attacking the decision to fund the statewide testing program through the curtailment of services to economically disadvantaged children. The issue was first raised in the April 1980 issue of the *IDRA Newsletter,*[75] with a follow-up article in June.[76] IDRA continued the fight until supplemental funds were appropriated in the 1981 legislative session for funding the statewide testing program.

In July 1980 IDRA again addressed the failure of any Texas Legislature to provide state funds for school construction.[77] The only effort to do so in the 1979 session of the legislature was Sen. Bob Vale's bill to provide construction and renovation funds to qualifying school districts, but the bill had experienced a quiet death in committee. An IDRA study showed the growing need for the state to provide facilities assistance and the impact of the legislature's failure to do so.

Between 1967 and 1977, the number of bond elections held declined from 1,625 to 858; the number approved declined from 1.082 to 477; and the total amounts of approved issues declined from $2.199 billion to $1.296 billion. All of these declines were in an era of increasing costs of school construction, high inflation rates and growing school enrollments.

For some years, IDRA had assumed an advocacy role for a segment of the school population enjoying little advocacy in the state—the children of undocumented aliens. Working with the Mexican American Legal Defense Education Fund (MALDEF), a new state law which excluded the enrollment of undocumented alien children was struck down in *Doe v. Plylar* and *Multiple District Litigation.* (see José A. Cárdenas in *Multicultural Education: A Generation of Advocacy,* Chapter 3, "Undocumented Children," Simon and Schuster, 1995) Participation in these court cases was one of the most bitter experiences of my life, leading to the writing of an article about the state's stupidity in fighting the two law cases tooth and nail all the way to the U.S. Supreme Court. ("The Undocumented Children Case and the Ghost of *Rodriguez*)

In an IDRA article which was reprinted extensively in other publications, I make four major criticisms of the Texas attorney general and the Texas Education Agency in their defense of the cruel and senseless exclusion of children of undocumented aliens: (1) Because of immigration laws and economic realities, the population in question was here to stay. Leonel Castillo, commissioner of the U.S. Immigration and Naturalization Service, testified that under existing laws most of the students in question would eventually become U.S. citizens. In addition to the impact of already existing laws, the United States did institute an amnesty program, which resulted in permanent U.S. residence for the children and youth turned away from Texas schools. (2) There was little information concerning the target population. Neither prior to the enactment of the new law barring them from Texas schools, nor during the four years the law was operational, was any attempt made to determine numbers, distribution, costs, educational needs, etc. (3) There was a huge discrepancy in the estimated number of such students in the state. Various studies conducted by IDRA and other agencies estimated the number at 20,000 to 30,000. TEA insisted that the number was 100,000. To support this claim, TEA commissioned a study based on the number of school-age children not enrolled in school, and assuming that all such children, including dropouts, were all undocumented alien children, came up with the 100,000 estimate. The court found the TEA study poor in methodology, illogical, unsound and unreliable. (4) TEA argued that the enrollment of undocumented children would lower the quality of education in the state. I testified in both court cases that immigrant children who attended school in Mexico consistently outperformed native born Mexican American, African American and disadvantaged children. Judge Woodrow Seals noted that during the four years that the undocumented children had been kept out of Texas schools there was no record of improved performance in the schools. (5) TEA argued that the admission of undocumented children would produce a negative impact and increased cost on bilingual and desegregation programs. This argument was ironic in that for years, the Texas Education Agency had opposed both bilingual programs and desegregation. In a legislative session just prior to the litigation, TEA had recommended that the appropriation for bilingual education be cut in half.

The sixth and last argument presented by TEA and the defendant school districts is the one most related to this publication. In *Rodriguez,* TEA defended the existing system of school finance in Texas, claiming that all school districts had sufficient resources to provide an adequate education. In the undocumented children litigation, TEA paraded a host of witnesses from property poor and inner city schools testifying to the inadequacies of resources and their financial inability to absorb any number of undocumented students.

I testified in both cases that the financial problems in the education of undocumented children should be attributed to the inadequacies of the system of school finance, which TEA consistently defended from 1968 in *Rodriguez*, through the multiple district litigation. Ironically, TEA continued its defense of the inequitable system in subsequent legislative sessions, throughout the *Edgewood* litigation, after the *Edgewood* litigation, and up to the present.

The contradiction of TEA and other state agencies in the school finance and undocumented children cases was not lost on the courts. Judge Seals in the *Multiple District Litigation* joins Judge William Wayne Justice in *Doe v. Plyler* in noting that "any spectator watching the state's presentation might easily have mistaken it for a retrial of the *Rodriguez* case, with the state of Texas acting as *amicus curiae* for the plaintiffs, emphasizing the plight of property poor border school districts under the state's educational financing scheme."

As the two court cases moved up the appellate route under the "take no prisoners" policy of the Texas Education Agency, the legislature had one more opportunity to resolve the issue in the 67th Legislature. Rep. Al Luna of Houston introduced HB 467 to remove the barrier to undocumented children's enrollment in Texas schools. IDRA's advocacy was augmented by similar support from the Texas Baptist Conference, the Texas Conference of Churches, various Mexican American civic and educational organizations, teacher groups, and even the Dallas and Houston districts, both originally opposed to the tuition-free enrollment of these students. Unfortunately, the political and educational leadership of Texas adamantly opposed the proposed legislation. The House passed the bill by a convincing vote. With support by Sen. Oscar Mauzy the bill was voted out of committee with an amendment providing additional state funding for districts enrolling the students. Supporters in the Senate were unable to muster the two-third vote necessary for the bill pass to the floor, and the measure died, leaving the issue in the hands of the federal courts.

The undocumented children decision by the two district courts was finally upheld by the U.S. Supreme Court. By coincidence, the vote in the Supreme Court was 5-4, the same as in the decision which had reversed *Rodriguez*. During the school year following the elimination of the legal barrier, the Texas Education Agency collected reports on the number of undocumented children enrolled in Texas schools. Neither the original TEA estimate of 100,000, nor a revised estimate of 110,000 during trial proved to be valid. After the court ruled against the ban and ordered that the undocumented children be enrolled, only 10,927 such children enrolled in Texas public schools.

1981: THE 67TH LEGISLATURE

The legislative agenda for the 67th session of the Texas Legislature was not much different from previous sessions. The State Board of Education made its recommendations early in the session. The Board submitted recommendations for an increase in the state funding for six major components:

1. Maintenance and operation allotment from $139 to $244 per pupil at a cost of $552 million
2. A teacher salary increase of 23 percent at a cost of $448 million
3. $66 million additional for transportation
4. An increase in equalization aid from $290 to $340 per pupil at a cost of an additional $65 million
5. $16 million of new funding for compensatory education
6. An increase of $4 million in the "fast growth" allocation

Legislative recommendations were also received from the Urban Council, the eight largest districts in Texas: Houston, Dallas, Ft. Worth, San Antonio, Austin, Ysleta, El Paso and Corpus Christi.
The Urban Council's legislative recommendations included:

1) increasing compensatory education funding.
2) increasing the number of bilingual teachers by allowing local districts to train and certify personnel.
3) developing flexible special education and providing additional funding.

4) provision of federal funding to offset the impact of enrollment of undocumented children.
5) developing flexible standards with regard to the hiring of teachers for specialized and high demand programs.
6) requiring state-mandated examination of teachers prior to admission to teacher education, and prior to certification.
7) provision of a state-supported health insurance plan and increasing the amount of state-reimbursed sick leave payments.
8) opposition to collective bargaining mandates for local school districts.
9) increasing the maintenance and operation allotment.
10) reimbursing school districts on the basis of actual transportation costs.
11) enactment of special state formulas to fund court-ordered busing.

In keeping with past tradition, the Urban Council (The Big Eight) did not recommend increases in equalization funding, again underlining the split in school finance advocacy that characterized the entire era of school finance reform. With few exceptions, the schools were very satisfied with the disparities between high and low wealth districts. Most school district administrators were simply interested in "enough funds to let us get by," regardless of the social and educational implications of an inequitable school finance system. This attitude was present during the trial of *Rodriguez;* it is present today. The educational leadership has consistently upheld the elitist system, sincerely believing that the type of children they serve do not need or deserve the same quality program reserved for the privileged.

In the absence of extensive advocacy in the educational system, IDRA again raised its lonesome voice in behalf of fiscal equity, state assumption of school construction costs and property tax equity. As in the past five sessions of the Texas Legislature, IDRA staff monitored the 67th Session, providing recommendations, presenting testimony, analyzing reports, and attending all committee and legislative sessions dealing with school finance.

The result of the 1981 session of the Texas Legislature was another "mixed bag." Increased funding was provided for maintenance and operation (raised to $220 and $237 for the two years of the biennium), teacher salaries (6.5 to 8.5 percent for the various grades), transportation (41 percent), and equalization (up to $290 and $360 in the two years of the biennium), compensatory education (14 percent), vocational education (12 percent and 25 percent cumulative increases for the biennium, gifted and talented (60 percent increase) and bilingual education. In response to IDRA criticisms of paying for all TABS testing out of compensatory education funds, the 67th Legislature did provided separate funds.

The increase in spending totalled $1.3 billion. This total amount may seem impressive, but it did follow an era of double digit inflation and spiraling costs for materials, supplies, utilities, equipment and facilities. As in past sessions, the legislative focus was on the overall cost of education and not on the reduction of disparities.

Even with the expenditure of $1.3 billion in additional funds in the biennium, and severe cutbacks in federal spending initiated by President Ronald Reagan, Texas was not in a financial bind. Texas ended the first year of the biennium with a $2.86 billion surplus and $6 billion at end of the biennium.

1983: THE 68TH LEGISLATURE

On the eve of the 68th Legislature, IDRA looked at the prospects for school finance reform. The following article by Albert Cortez reports on the major legislative issues:

> As the State Legislature prepares for its biennial session commencing on the second Tuesday in January 1983, the attention of the state's educational leadership is focused upon the proposed 5 billion "new" dollars which will be available for appropriation. Legislative analysts concur that school financing, as it has for the three preceding legislative sessions, will continue to be one of the major agenda issues confronting the state's lawmakers. Reflecting the healthy economic climate of the nation's Sun Belt, Texas' overall economic condition is a key factor in the continuation of school finance reform efforts. Among the major school finance issues which will require the state's legislators' attention are:

- the state's continuing lag in educational spending and mediocre standing in the ranking of state educational expenditures;
- a growing concern with the declining availability of teaching personnel caused by generally substandard pay scales, which are supported by the state's minimum foundation program;
- the continuation and expansion of inequalities in the revenues available to educate children in low and high wealth school districts;
- a growing recognition of and concern with the gap in competency test performance among minority and non-minority pupils;
- a need to address the impact of the Supreme Court ruling involving the education of undocumented children; and
- the continuing pressure to adjust state and local school finance formulas in response to spiraling operating costs.

Anticipating the record new money availability, the State Board of Education has proposed a $2 billion dollar school finance proposal which includes: (1) increases in teacher salaries, (2) a 10 percent increase in the state's maintenance and operations allotment for each year of the biennium, (3) a 40 percent increase in transportation allocations, (4) a 9 percent increase in compensatory education funding, and (5) increased equalization aid funding. Additionally, the state board is proposing significant increases in funding of the state's gifted and talented program, increases for the state's regional educational service centers, and the creation of an urban density formula to assist districts with large enrollments. A significant cost factor ($210 million) in the state board's proposal is the maintenance of the local share of foundation program costs at current levels. Of concern to school finance equity advocates is the offsetting impact which the bailout provisions (which maintain local shares constant while the state pays the differential) will have on state school finance equalization efforts.

Although the state board's recommendations will be given consideration, the priorities of other educational interest groups will also be considered by the state's lawmakers. The Texas State Teachers Association (TSTA) will be formulating its own recommendations concerning teacher compensation, and will most likely push for state-financed group health insurance and collective bargaining/professional negotiations. Among its secondary issues, the teachers' association is considering funding for compensatory education, bilingual education, strengthening laws regarding maximum class size, duty-free lunches, and a variety of other issues. No funding levels had been proposed as of this writing.

The Texas Association of School Administrators (TASA) recommendations will closely track the state board's, with the major deviation involving a higher allocation for the maintenance and operation allotment. Their package is estimated to expend approximately $2.6 billion dollars.

The Texas Association of School Board's (TASB) proposal will focus on the primary elements of the school financing system including salaries, equalization aid, maintenance and operation, transportation, gifted and talented programs, and the local share issue. One of the unique features of TASB's stance will be that their salary recommendations will be somewhat below those of other major proposals.

Proponents of school finance reform are awaiting the formulation of the governor-elect's school finance legislative recommendations. Although no specific elements have yet been identified, it is believed that the governor's office will address significant increases in teachers' salaries, increased operating allotments, a greater emphasis on equalization aid, and more monies for compensatory education, bilingual education, and other foundation program elements.

Research conducted by IDRA and the Austin-based Equity Center indicated that past reform efforts had not resolved the disparity issue between high and low wealth districts. If anything, the number of hold harmless provisions, the increased cost of education, and the focusing of resources into general education rather than equalization resulted in increased disparities. The Equity Center found that between the 1979–80 and

1981–82 school years, the average expenditures per student in the wealthiest 119 school districts in Texas increased by 46 percent, while expenditures in the poorest 119 districts increased by less than 11 percent. The difference in the average expenditure between the two groups increased from 200 percent in 79–80 to 300 percent in 81–82.

Growing impatience with the growing disparities and the legislature's rhetoric about the need to perpetuate the high quality of education in privileged districts, and the need for local control led to a sense of indignation in communities throughout the state. At IDRA's initiative, a coalition of reform groups put together a package of reform elements for increased equity in the system. The following nine elements were presented to incoming Gov. Mark White, who had repeatedly stated that school finance would be his legislative priority in the 1983 legislative session.

1. increasing the state equalization aid allocation to a level comparable to the state average local enrichment per pupil;
2. increasing compensatory education from $50 to $100 per eligible student, coupled with more effective targeting of funds for students needing remedial programs;
3. increasing bilingual education funding to $150 per student;
4. reallocating new revenues in the available school fund and distributing these funds on the basis of local tax wealth;
5. initiating a state-funded program to help school districts finance local school construction and remodeling costs;
6. providing impact aid to school districts with large undocumented student enrollments;
7. phasing out local share and minimum aid "hold harmless" clauses in existing laws;
8. reimbursing school districts for cuts in federal aid; and
9. allowing local district shares of foundation program costs to increase in proportion to growth in their taxable wealth.

As was the case during almost every legislative session, during the 68th session, IDRA published updates on state rankings in educational expenditures for 1980–81 based on data from the National Center for Educational Statistics. An IDRA article in January 1983, at the beginning of the session, noted that Texas ranked 39th among the 50 states and the District of Columbia in per pupil expenditures.[78] The top three states in per-pupil expenditures, which in 1973 were New York, Alaska and the District of Columbia, were still the top three states in 1980–81: Alaska ($5,010 per pupil), District of Columbia ($3,682) and New York ($3,358). The 1980–81 national average was $2,323. Texas ranked 39th, with $1,955 following a sharp rise in the state's relative wealth due to its oil and gas resources.

In March 1983, as the legislature was still ineffectively debating school finance issues under the leadership of Gov. Mark White, Lt. Gov. and Senate leader William Hobby and Speaker of the House Gib Lewis, IDRA published the state rankings for 1982–83 based on National Education Association data. As it is usually the case, the Texas ranking dropped in the second half of the state biennium. Alaska still ranked number one with a per pupil expenditure of $6,620, followed by New York ($4,302), and New Jersey ($4190). In one year, Texas had dropped from 39th to 43rd, with an annual expenditure of $2,299.

Although the Texas investment in education in 1983 was just as deplorable as it was in 1973, or even worse, the context of education in an economic environment had definitely changed. During these brief 10 years, the nation's economic base had started changing from agriculture, heavy industry and minerals to information, services and technology. The basic rationale for school finance equity in the name of social justice was amply augmented by equity as an economic imperative.

During the early years of the Reagan administration (1981–83), the federal government initiated a disengagement from education, particularly from support for equity programs for minority, economically disadvantaged, migrant and limited English proficient students. The cyclic disengagement of the federal government from education was immediately followed by an equally cyclic re-engagement in education as the use of technology intensified.

In a February 1983 article in the *IDRA Newsletter* entitled "High Technology and Equal Educational Opportunity," I noted the effects of the federal involvement in education:[79]

Differences in educational opportunity are going to be exacerbated by the new technology. Disparities in educational funds between affluent and low wealth school districts and differences in personal resources between rich and poor kids will widen the achievement levels between the two. Studies of the dispersion of computer equipment in the nation's schools today show that the distribution is already extremely lopsided. Computer equipment is concentrated in the wealthiest schools and few students from low income homes have seen one, let alone accumulated hands-on time.

The key to the federal engagement in the new technology is that it be coordinated with past and present efforts in the equity issue, rather than being implemented as a replacement for the equity issue.

If we look at the three roles of the computer in education we can predict a continuous worsening of the existing situation over the next few years.

1. The role of the computer in the management of instruction will increase the advantage of pupil in high wealth school districts. Teachers and support personnel are receiving powerful instructional tools which will expand their ability to teach, while the lack of computer availability in low wealth schools will perpetuate their inability to cope with the existing problems of teaching the disadvantaged, the minorities, and the limited English proficient.
2. The role of the computer as a product of education will similarly hamper the employability and further training of the disadvantaged. Funding limitations in low wealth schools are so severe that it is conceivable that years from now, in the midst of the age of high technology and computers, these schools will be graduating pupils who have never seen, let alone have had access to, a computer. It is no exaggeration to make this analogous to a school graduating a secretary today who has never seen or had access to a typewriter.
3. The role of the computer in the process of education will again penalize students in low wealth school districts. There is every indication that computer-assisted instruction will revolutionize the quality and the quantity of educational programs. This impact will not be felt in schools without the resources for the implementation of the new technology for instructional purposes. A brief review of the emerging software indicates that, similar to the curriculum of the pre-equity era, it is a curriculum developed for white, Anglo-Saxon, English-speaking, middle-class children. The computer-assisted instructional programs make no attempt to bring about any compatibility between them and the characteristics of atypical student populations.

A concern for the impact of the new technology on equality of educational opportunity rests on the assumption that the new technology will pre-empt educational equity as the dominant and almost exclusive national priority. Needless to say, this does not necessarily have to be so. A preferred alternative is the integration of the new technology into the existing national priorities, and development of the necessary strategies for the implementation of an integrated effort involving the two concerns without a detrimental exclusivity.

During the next few years educators, social scientists, politicians, and technicians will be gathering at various conferences to map out a plan for the fulfillment of the next decade or two as a new era in education. It can only be hoped that in these sessions there will be concern for the continued expansion and development of all of the resources of this country, and that the new educational strategies developed and implemented will be conducive to giving expanded opportunities to all children.

The use of technology has continued to increase in business, industry and personal activity to the point that its role in education cannot be ignored, neither can technology as a means to an end, nor technology as an end it itself.

The article cited above was supplemented by a "Part II" sequel on the relationship between high-tech and equal educational opportunity. The second article, published by IDRA in August 1983, was written in response to extensive reader feedback on the February article, IDRA's research on computer-assisted instruction, and the emergence of more information on the relationship between high tech and educational opportunity.[80]

By August 1983 it was clearly evident that educational technology was widening the gap in student performance between high and low wealth districts. I therefore proposed a three-step measure to address these disparities:

> The widening of the opportunity gap as a result of the new technology continues. Unfortunately, the growth in disparities will not diminish until several steps are taken to remedy the existing situation.
>
> The first necessary step is the development of policy concerning educational technology utilization in the schools. The acquisition of technical equipment by the schools has occurred, for the most part, in the absence of any national or state leadership. In fact, recent studies indicate that the bulk of microcomputers currently found in the nation's schools was acquired with local funds, most often purchased by PTAs and other local support groups. Yet, if the microcomputer will impact education to the extent being claimed in all the media, PTA purchases (based upon a wide range of PTA purchasing power) are too haphazard a resource for the introduction of educational innovation. As is the case for almost any type of educational expenditure, if it is important enough to justify the expenditure of funds, it is important enough to include in the school finance structure. It is regrettable that what is considered the most important innovation in education in the last few decades should come in through the back door in the absence of state and national policy and support.
>
> The second step needed to forestall a widening of the technological opportunity gap is the equalization of resources between the high and low wealth schools. This problem has been with us for half a century now and, after much litigation and legislation, remains a problem in all but a few of the 50 states with favorable post-*Rodriguez* court cases. Suffice it to say that the opportunity gaps existing prior to high technology utilization in the schools will grow exponentially in future years. The third step in reducing the impact on educational opportunity is enhancing the appropriateness of technological developments for utilization by nontypical populations. The three most significant special populations requiring appropriate technological tools are minorities, the economically disadvantaged and the limited English proficient (LEP).

At the end of the article, I present seven implications and recommendations:

> If the movement toward the increased use of high technology in education is not to exacerbate differences already existing, it is necessary that preventive steps be taken. These steps should address the following points.
>
> 1. The development of national and state policies on the use of technology in the schools. Policy must be accompanied by the necessary funds and resources for adequate implementation.
> 2. There is a serious disparity in the accessibility of computers among schools attended by students from varying socio economic levels.
> 3. The amount and the type of participation in the utilization of educational computer programs differs among the various segments of the population.
> 4. Not all children stand to acquire benefits from the haphazard introduction of computer technology into the schools.
> 5. Available computer software is not appropriate for special populations such as minorities, the disadvantaged and the limited English proficient.
> 6. There is a need to develop new software and to modify or adapt existing software for use by special populations.
> 7. Computer-assisted instruction can make a contribution to the improvement of educational opportunities if existing problems are addressed.

My extensively voiced concerns for addressing student performance disparities through school funding disparities did not fall on deaf ears. Although the educational leadership in Texas expressed little interest in my concerns, the private sector did. For example, United San Antonio (USA), an organization composed of business and civic leaders conducted a citywide forum on the subject and committed itself to supporting equalization efforts in school finance reform.

The same was true for the Greater San Antonio Chamber of Commerce. In past years, the Chamber and I played adversary roles. In their attempts to attract business and industry to San Antonio, the Chamber promoted the availability of a cheap labor pool, a large pool of unskilled workers continuously fed by the extensive failures in the San Antonio schools. Much to their credit, the Chamber was quick to realize that cheap labor had become an obsolete commodity. Business and industry were now interested in the ability of the community to provide an abundant supply of *skilled* labor, but San Antonio not only did not have this abundant supply, it didn't even have an educational system capable of developing it. (For a detailed analysis of science, math and technology instruction, its problems and causes, see Cárdenas, José A., *Multicultural Education: A Generation of Advocacy*, Chapter 7, pp. 392–399, "Science and Math Equity in the Schools.")[10]

As the business community became more sympathetic to our cries for school finance reform, the past symbiotic relationship between the business community and the schools became strained. Educators, who tend to live in ivory towers oblivious to what is happening in the real world, seemed to be asking, "Why is the business community attacking us when we have always given them an abundant supply of cheap labor?" In turn, the business community appeared to be saying, "Stop! We don't need, we can't use, cheap labor. We now need skilled labor! And plenty of it!" Any remaining need for cheap labor could be obtained in Third World countries, where cheap labor was really cheap, at less than one-tenth of the minimum wage required in the United States.

For the next 10 years, Texas schools would make a feeble attempt to develop skilled labor but they faced two formidable barriers, the students and the system. Looking for new materials to convert into skilled labor, the schools found only the economically disadvantaged, the minorities, the immigrants, the migrants, and females, populations that the schools had never succeeded in educating, or even attempted to educate, in the past. Attempts to address these atypical populations proved impossible; most of the students were enrolled in educational systems long excluded from adequate funding. The more skilled, the better trained, and the most successful teachers still tended to migrate to the higher wealth schools with locally enriched salary schedules and generous fringe benefits and working conditions provided by local enrichment funds not available in low wealth districts.

The inability of the state educational system to move into the 20th century, let alone the 21st century, is exemplified by longitudinal dropout rates in excess of 50 percent in the San Antonio, Houston, Dallas and other urban school districts.

I strongly believe that the partial success in the equalization of financial resources of the last 10 years can be attributed to the advent of technology and the increased need for science, math, and communication skills in the business community. This may be a bitter pill for us advocates of social justice to swallow, but we can swallow the bitter pill with the realization that the economic need is finally producing the much-needed social justice in education, which we have been pursuing for so many years.

In March 1983 Albert Cortez and I itemized what we considered to be the most pressing legislative issues in the education of Mexican American children.[81] The section dealing with school finance again lists the highest priority items:

(1) Increased equalization aid
(2) State funds for school facilities
(3) Fair state/local shares based on district wealth
(4) Categorical funding of special programs, and
(5) An equitable method of distributing the Texas available school fund

The available school fund is income derived from the permanent school fund, a trust fund established by the state in 1854 by the dedication of public lands for education. The original fund was lost when it was used to guarantee bonds issued by the Confederacy during the Civil War. It was re-established following the war, and the discovery of oil and gas on the dedicated land led to a large increase in its holdings and revenues. The fund is administered by the Texas State Board of Education and has an estimated value of at least $8 billion. Income from mineral leases and interest, probably totaling $600 million, is placed in the available school fund each year. The cost of providing textbooks to Texas schools is subtracted from the available school fund, and the balance is distributed to the schools. Unfortunately, the distribution had always been on a per capita basis, with the amount allocated to each district based on the number of children in the district. Very high wealth districts with exceedingly low tax rates received the same amount per student as the poorest districts in the state. Considering the pressing need for equalization funds, TEE/IDRA consistently held that the distribution of the available school fund should be based on district wealth, with districts with little property wealth receiving the major portion of the distribution.

During the 1983 legislative session, the Texas Federation of Teachers (TFT) joined IDRA and other advocacy groups in pushing for an equitable system of school finance. Although the organization placed the same high priority on teacher salaries and benefits, unlike the Texas State Teachers Association (TSTA), TAFT took strong exception to the disparities in teacher salaries between high and low wealth districts. This presented a strange paradox since the National Education Association (NEA) had been a strong supporter of school finance equity since the *Rodriguez* litigation, but TSTA, the state affiliate, never provided support, other than occasional lip service. On the other hand, the American Federation of Teachers (AFT) was never very supportive of equity and even hostile to minority education programs, while its Texas affiliate, TAFT, was extremely supportive. (see "Al Shanker, The AFT, and Minority Issues" in Cárdenas, José A., *Multicultural Education: A Generation of Advocacy*)[10]

In March 1983 Gov. Mark White presented his budget recommendations to the 68th Legislature. The following article from the April 1983 issue of the *Newsletter* reports on the governor's recommendations and the reaction of the Texas Association of School Boards:[82]

> Gov. Mark White presented his budget recommendations to the 68th Legislature on March 9, 1983. Of the $1.8 billion increase recommended for the foundation school program (FSP) for the 1983–85 biennium, 88 percent of the increase ($1.6 billion) is earmarked for educational staff salary increases. Equalization aid would be increased by $170 million and bilingual education would be increased by $10 million. Other components of the FSP that would receive less significant increases are maintenance and operations, compensatory education, gifted and talented programs, and transportation. The statewide local fund assignment would be increased by $166 million and the minimum aid hold harmless clause would be eliminated.
>
> The Texas Association of School Boards (TASB) is opposed to Gov. White's budget proposal because it may require some school districts to raise local property taxes. On March 15, 1983, the TASB sent a position paper on school finance issues to superintendents, board presidents, and the TASB legislative network. TASB's analysis of Gov. White's budget is that it, ". . . shift(s) the responsibility for raising taxes from the state level to local school boards across Texas." TASB expressed concern that, ". . . the governor's proposed budget indicates a lack of understanding of the realities of public school finance in Texas."
>
> If the governor's proposed $1.6 billion in salary increases is approved, TASB maintains that school districts would be required to raise $800 million in local property taxes. This is based on commissioner of education Raymon Bynum's testimony that each $1 increase in state salaries necessitates a 50ò increase by local districts in order to pass on the salary increase to employees. According to TASB, the counties that will be ". . . especially hard hit are . . . Dallas, Tarrant, Harris, Travis, Jefferson, Midland, and Ector, and rural Texas." If unsuccessful in raising property tax levels, TASB asserts that such school districts will be forced to reduce programs and staff.
>
> The purpose of school finance reform legislation is to diminish disparities among school district expenditures for education. The TASB criticism seems ironic in that, in effect, what TASB is saying is that the proposed legislation is unfair because it would create a financial strain on the higher expending school districts if they are to maintain the same level of disparity that existed before the proposed legislation . . .

The TASB opposition to a much needed tax increase for its wealthiest members led to their sending a letter of alarm to its membership. The TASB letter informed the membership of the impact of an increase in the low tax rates of the wealthier districts. The TASB letter led to a blistering reply from Bill Sybert, Superintendent of the poverty-stricken Socorro District, and published in the April 1983 issue of the *IDRA Newsletter*.[83] Bill Sybert would remain a strong supporter of school finance and property tax equity and would play a major, active role in subsequent school finance litigation. His letter reflects the growing concern and frustration of low wealth districts:

> Thank you for your letter of March 15, 1983. My heart bleeds for the poor school districts in Dallas, Tarrant, Harris, Travis, Jefferson, Midland and Ector Counties.
>
> It is tragic that the governor's proposal will cause some of them to raise property taxes toward the level that many property poor districts have been taxing for years. I am horrified to learn that local fund assignments will go up about $166 million. This almost seems like a conspiracy to provide for the proposed new $170 million in equalization aid.
>
> Certainly, I agree that it wouldn't be feasible for them to cut any programs or staff. If they did, they might have to operate programs on the same kind of tight budgets that districts without oil wells and bank towers are getting by on. And those of us who can't afford excess personnel units would be deeply affected if these districts had to reduce theirs.
>
> Like Paul Revere, you have spread the cry of alarm. If I can find my musket, I'll rush to Austin to help you save Dallas and Houston from this impending disaster.

This exchange between TASB and one of its member districts highlights one of the most perplexing aspects of the entire 25-year life of the school finance reform movement. The major professional associations, the Texas Association of School Boards, the Texas Association of School Administrators and the Texas State Teachers Association provided 25 years of opposition to an equitable system of school finance. Although it is readily apparent that the three professional associations were controlled by, and expressed the interest of its wealthiest members, it is inconceivable that the poorest school districts with the least resources and the lowest administrator and teacher salaries continued their affiliation, submitted their financial contributions, and supported their agendas, in spite of the low wealth district affiliations, money, and support being used by the professional associations to oppose the equalization so much needed by the low wealth districts. During the entire 25-year period, I do not know of one single school board member, school administrator, or classroom teacher in the state who disassociated himself/herself from the respective organization working against their best interests. The best explanation I can offer is that the financially hampered board members and administrators, and the low paid administrators and teachers readily accepted their lowly rank in the professional pecking order. Unfortunately, the students in low wealth districts paid a much higher price as a result of their guardians' subsidizing of opposition to the students' improved educational opportunity.

Polarization of proponents and opponents of school finance and tax equity resulted in the failure of the 68th Legislature to enact a school finance bill. Albert Cortez, who attended every committee and floor session in which school finance was considered, reports on the deadlock in the 1983 legislative session:[84]

> In a mood reminiscent of the 1977 Texas Legislature's impasse on educational funding legislation, the 68th Legislature failed to pass school finance legislation which would have updated various facets of existing law.
>
> Although the State Senate passed out Committee Substitute for Senate Bill 391 (CSSB 391) sponsored by Sen. Grant Jones on April 12, observers realized that many of the controversial issues were left unresolved and that major floor battles were anticipated when the House deliberated its own version of the 1983 school finance legislation. After holding hearings on major legislation, the House Education Committee referred all major education finance bills to a subcommittee where no action emanated on the issue until the final two weeks of the session.
>
> On April 27, the House Education Committee finally reported on Committee Substitute for House Bill 716 (CSHR 716) by Rep. Bill Haley, the committee chairperson. Major provisions in this proposal included:

(1) The creation of an education excellence fund, a new mechanism for providing increases in personnel salaries;
(2) the creation of a procedure for rewarding teacher longevity by providing a $40 per month salary supplement to teachers with extensive experience;
(3) the modification of existing law to allow the use of the operating expense allotment for any legal purpose, including personnel salaries;
(4) the expansion of minimum aid hold harmless provisions to ensure that school districts receive as much state aid per pupil (plus excellence funding) as they did in the preceding year;
(5) the funding of a new density formula designed to provide additional personnel units for districts with 10,000 or more students in average daily attendance; and
(6) a revised equalization aid formula originally designed to: (a) include more rural school districts by redefining the wealth eligibility criteria, and (b) concentrate more of the available equalization aid revenue into districts in the bottom quartile of taxable property wealth.

In addition to the Senate and House proposals Gov. White formulated can alternative finance package which provided for:

(1) as much as a 24 percent increase in teacher salaries through an increase in the current salary schedule and limited funding for the proposed education excellence fund,
(2) the utilization of the "quadratic" equalization aid formula incorporated in the Senate proposal, and
(3) some more limited increases in minimum aid.

Although the interaction of the many factors influencing the consideration of these three proposals is difficult to discern, informed observers concur that the governor's proposal was stalled by the House speaker's adamant opposition to any tax proposal, a situation which precluded serious consideration of a plan premised on the availability of over $1.2 billion in additional tax revenue.

While the governor's proposal was facing opposition from fiscal conservatives, the House committee grappled with its own response to the school finance crisis. CSHB 716 was reported to have undergone various modifications by a coalition organized by major urban districts which sought to forge a compromise proposal acceptable to a majority of House members. Differing significantly from the governor's plan, the compromise package provided for:

(1) an increase in salaries and operational expense allocations through the new education excellence fund;
(2) the creation and partial funding of the density formula;
(3) the expansion of minimum aid to cover increases in state aid related to excellence funding, density, and equalization;
(4) the provision of supplemental funding for teacher longevity as proposed in the original House Bill 716; and
(5) the modification of the equalization aid formula using a square root approach comparable to the Senate, but providing a significantly higher wealth eligibility cutoff, thereby qualifying a larger number of school districts for equalization aid. Additionally, supplemental equalization aid would be provided to the lowest wealth school districts if additional revenue became available.

Although this compromise proposal did not provide for a specific appropriation, the fact that funding for various aspects of the proposed legislation was not included in either Senate or House appropriation bills essentially required that a tax bill be considered in the regular session, or in a special called session.

> CSHB 716's failure to address the teacher salary issue in a manner acceptable to the major teacher associations (the Texas State Teachers Association and the Texas Federation of Teachers) was a major drawback that predisposed the failure of the proposal. The fact that various aspects of the proposal, such as minimum aid, the proposed education excellence fund, and the density formula, all had no effective equalizing provisions also contributed significantly to its failure. Recognizing the lack of a majority consensus on the proposal, Rep. Haley chose not to introduce his proposal and opted to reconcile the major issues in the anticipated special session.

There were two developments in the aftermath of the failure of the 68th Legislature. First, in spite of loud cries for a special session to work out a compromise bill to provide the much needed school finance reform, Gov. Mark White, Lt. Gov. William Hobby and House Speaker Gib Lewis opted for what had already become standard practice, the formation of a group to study the problem, develop a response, and present it to the 69th Legislature in 1985.

Second, low wealth districts and advocates of school finance equity were fed up with the failure of the legislature to provide meaningful relief. Toward the end of the 1983 legislative session, IDRA staff met with Superintendent James Vasquez and other officials of the Edgewood School District to discuss the much-deferred litigation in a state court. The result was a resolution adopted by the Edgewood board on May 13, 1983. The resolution stated the constitutional provisions for an efficient educational system and the continued failure of the state to provide it. The resolution notes that,

> This board of trustees, having received comprehensive analyses from several sources, sadly concludes that even through the [Constitution] . . . provides for an efficient system of public schools and substantially equally financing of those schools, the reality is that neither one exists in the state of Texas. Furthermore, indications are that legislation presently being considered perpetuates a duality of school systems throughout the state of Texas that encourages the existence of low and high wealth school districts, thus denying equal educational opportunities to all students of Texas.

The Edgewood resolution was followed by a strong endorsement of the Edgewood position by Tony Bonilla in behalf of the League of United Latin American Citizens (LULAC), and a similar endorsement from the Mexican American Legal Defense and Educational Fund (MALDEF) and IDRA, with both organizations pledging their resources in the litigation effort. IDRA then convened a meeting of school finance equity advocates and representatives of low wealth districts to discuss the possibility of litigation.

The group concluded that litigation was both necessary and viable. We anticipated a favorable outcome based on: (1) the availability of an comprehensive data base compiled by IDRA, state agencies and interest groups; (2) IDRA research showing a significant relationship between Mexican American enrollments and levels of expenditures; (3) the emerging data on Texas student achievement testing showing poor minority performance in low wealth districts; and (4) the Texas Legislature's apparent inability or reluctance to address successfully vital reform issues after 10 years of informed deliberation.

The outcomes of the select committee appointed to study the matter and report to the 69th Legislature and the launching of a litigation initiative would produce so much turmoil that they are presented as separate chapters in this publication.

The year 1983 marked 10 years of frustration in the attempt to reform school finance in Texas. IDRA expended literally millions of dollars in pursuit of a legislative response, but upon celebration of the 10th anniversary of TEE/IDRA, it was apparent that the answer could not be found in the legislature, nor in the political and educational leadership of the state. If there was to be a solution it was to be found in the courts, where we had started the quest 10 years earlier.

CHAPTER 5

BILINGUAL EDUCATION FUNDING

Since its inception, TEE/IDRA has functioned as an advocacy organization in behalf of improved educational opportunity for children. During the time that most of the entity's resources were directed toward school finance reform, the resource effort consisted of three priorities: equitable distribution of all funds, increased total funding for education, and special funding for programs for children with special needs.

One such program was bilingual education for limited English proficient students. Personal and institutional activities in behalf of bilingual education are extensively documented by me in *Multicultural Education: A Generation of Advocacy*[10] and need not be presented here. Interested readers are referred to the multicultural education book in which bilingual education is the most extensive chapter.

Of interest in a school finance publication is the extensive efforts in behalf of obtaining adequate funding for bilingual programs. My initial involvement in this effort was during a 1967 bilingual education conference in Tucson, Arizona, sponsored by the National Education Association (NEA). Texas U.S. Sen. Ralph Yarborough was in attendance, and a group of attendees from Texas met with him one evening. Present at the informal meeting with Yarborough in our hotel room were Texas legislator Joe Bernal, McAllen school board member Jesse Treviño and Dr. Juan Lujan and myself from the Southwest Educational Development Laboratory in Austin.

During this meeting, we convinced Sen. Yarborough of the need for federal legislation to provide support and funds for bilingual education. The result of this effort was the enactment in 1968 of the Bilingual Education Act as Title VII of the Elementary and Secondary Education Act. During the writing of the federal legislation, I had the opportunity to work with the senator's staff and make extensive input into the provisions of the bill, including a generous amount of funding for pilot programs in bilingual education as well as extensive research, materials development and teacher training.

Although the federal Bilingual Education Act provided ample amount of funding, funds were limited to temporary support of pilot programs with the expectation that the various states would subsequently assume the cost. This was difficult in Texas. State legislation still prohibited the use of a language other than English for instructional purposes (except in foreign language instruction), and there was little hope that any state funds would be allocated for the continuation of the federally initiated pilot programs.

Early TEE/IDRA research efforts in school finance determined a high correlation between low district wealth and the number of Mexican American and economically disadvantaged children, indicating that school districts enrolling such children had the least resources for providing an education and no resources for special needs. Efforts for the development and implementation of bilingual programs in Texas would have to be complemented with the necessary funds for program operation. Therefore, as the educational equity part of TEE/IDRA sought the development and implementation of bilingual programs, the school finance equity effort dealt with the allocation of appropriate resources in support of the programs.

An early attempt at providing both bilingual programs and the necessary funding was made in 1973 by Mark Yudof and myself in the filing of a bilingual intervention suit in *United States v. Texas*. Eventually, this suit would provide a strong impetus for the enactment of a bilingual program and bilingual funding by the Texas Legislature.

The success of the *Lau v. Nichols* court case in the U.S. Supreme Court in 1974 was seen by IDRA as a catalyst not only for bilingual funding, but for increased equity for the entire system of school finance.

The state law prohibiting the use of a language other than English for instructional purposes was rescinded in 1969 by House Bill 103, which gave a nebulous authorization for bilingual programs "when such instruction was advantageous to pupils."

State funding for bilingual education was provided by the Texas Bilingual Education Act (SB 121) legislated in 1973, mostly as a response to Judge William Wayne Justice of the Federal District Court in Tyler in the desegregation court case, *U.S. v. Texas.* In 1971, the state was ordered by Judge Justice to provide bilingual and bicultural programs to Spanish-speaking Mexican American schoolchildren. The 1973 legislation was perceived by bilingual education advocates as a travesty. Of the more than 170,00 limited English proficient children identified in need of a bilingual program, a mere 26,000, only 15 percent were served by state funded bilingual programs. Only $2.7 million were allocated by the 1973 Bilingual Act, and by the time administrative and teacher training costs were deducted, only $15 per participating student remained for the operating costs of the program.

Funding for bilingual education increased each year through the 1976–77 school year when it peaked at $9,324,000. It subsequently declined through 1980–81, when only $4,545,000 was appropriated while the number of eligible children had increased to 209,937.

"BEST PRACTICE" METHODOLOGY

In spite of continuous advocacy efforts to increase funding for bilingual education, the effort was hindered by a lack of information on the financial needs of such a program. The Texas Education Agency has consistently used a "best practice" methodology for determining school financial needs for all types of programs. This methodology identifies "successful" programs and determines the amount being spent for those programs. This amount then becomes the standard for funding.

The TEA "best practice" methodology has always had at least three basic flaws. First, the identification of "successful" programs has often been based on subjective factors. In many cases, the "success" of the program is determined by the quality of the public relations office distributing information in the districts operating the program, rather than the quality of instruction offered the students.

A second flaw is found in the use of Texas expenditures as a model for funding. Since Texas consistently ranks between 36th and 40th among the 50 states in expenditures for education, it seems foolish to accept educational expenditures in Texas as a best model for determining adequacy of funding.

A third flaw in the methodology is the existence of a self-fulfilling prophecy, or more appropriately, a self-fulfilling limitation. The program cost is always constrained by available resources. Determining the amount being expended under the availability constraint, by necessity, produces an amount equal to the amount being expended. There is little opportunity to determine how much better a program could be if adequate resources were available since the amount being expended, which is usually the amount available, limits program expenditures. This flaw serves the Texas Education Agency well, since the agency has consistently found the current level of expenditures, the current level of available resources, the current level of equalization aid, the current level of special program funding, and the current level of facilities aid, to be the appropriate amount needed by the schools.

This traditional "Society for the Preservation of the Status Quo" role of the Texas Education Agency acted as a formidable barrier to the provision of adequate resources for bilingual education. The three traditional TEA flaws in determining optimum levels of expenditures were augmented by the newness of bilingual education programs. Throughout the country, let alone the state, there were no prior studies of the cost of bilingual education programs. As far as IDRA could determine, the recency of implementation, lack of resources, administrative opposition and other factors made cost even more difficult to analyze than in older and more stable programs.

BILINGUAL COST ANALYSIS

In the absence of state educational leadership, IDRA undertook the task of determining the amount of funds necessary for the implementation of an adequate bilingual education program. Funds for the bilingual education cost analysis were acquired from the U.S. Department of Education and the project was initiated in 1976.

José A. Cárdenas was the principal investigator, and assisted by former state Sen. Joe J. Bernal and William Kean from IDRA staff.

The following persons participated as the panel of experts in determining areas of additional expense and estimating the cost of these areas:

Dr. Felix Almaraz	University of Texas at San Antonio
Dr. Ernest Bernal	University of Texas at San Antonio
Amparo Cardenas	Weslaco ISD
Ilene Cordray	San Antonio ISD
Ruben Gallegos	Dallas ISD
Dolores L. Garcia	Mercedes ISD
Angel Noe Gonzalez	U.S. Office of Education
Dr. Josue Gonzalez	Chicago State University
Imelda Guerra	Donna ISD
Dr. Arturo Gutierrez	Texas Education Agency
Dr. Albar Peña	University of Texas at San Antonio
Alonso M. Perales	San Antonio ISD
Mauro L. Reyna	Austin ISD
Dr. Robert Tipton	Texas Education Agency
Gail Williford	Texas Education Agency
Dr. Gloria Zamora	University of Texas at San Antonio

The following is a summary of the Texas *Bilingual Education Cost Analysis* report published by IDRA in August 1976:[85]

> *Introduction* While bilingual education programs in this country's schools can be traced at least as far back as the 18th century, during the past seven years, this type of instruction has experienced an extraordinarily high rate of growth. Federal legislation, court decisions, administrative regulation, and legislation in numerous states have clearly established that children of limited English-speaking ability have a right to a school curriculum which meets their language needs. However, in spite of the rapid development of bilingual education in recent years, programs are not reaching all who could benefit from them.
>
> One deterrent to the development of an adequate number of programs has been the lack of data on program costs. Recent school finance literature ignores bilingual education, and state legislatures, facing the need to fund programs, have had to adopt fairly arbitrarily generated figures, often simply using compensatory education costs. This situation has resulted in considerable program funding variation between states (for example, $25 per pupil in Texas; $351.50 in New Mexico), while funding through the various federal programs shows even greater variation.
>
> This study undertook a cost analysis of bilingual education in Texas to determine the per pupil add-on costs of a minimally adequate program, which would correspond to the regular monolingual program funded under the state's foundation school program. Additionally, the study determined weighted pupil factors for bilingual education.
>
> Project staff initially considered adapting the methodology used in the National Educational Finance Project series of studies and the recent Texas and Florida school finance studies, but this approach was rejected due to its reliance on costs of existing "exemplary" programs as indicative of what programs should cost.
>
> When considering the "exemplary" program approach for the study of bilingual education costs, several weaknesses are apparent:
>
> 1. Existing programs reflect funding constraints such as those presently found in the Texas system (or in other states), as well as varying levels of funding from local and

federal sources. As such, existing programs probably do not represent developments which could take place under different constraints.

2. Bilingual education is undergoing a process of evolution. Thus present "exemplary" programs, while perhaps containing elements which should be emulated over a wider area, probably should not be emulated in their entirety.
3. Present "bilingual" programs in Texas vary from one district's offering of English as a Second Language in the first grade to another district's offering of a wide range of subject areas in grades K through seven. In addition, student time in bilingual education can vary from a few hours per week to virtually full time.
4. Any process used to select "exemplary" existing programs is very susceptible to an intrusion of educational politics.
5. School districts' financial records in Texas are only rarely kept in a way which would allow the exhaustive tracking of expenses to specific program areas.
6. Texas ranks in the bottom one-third nationally in per pupil expenditures. Thus, it seems questionable to assume that existing programs in the state represent the best models for emulation which can be found.

Awareness of the above constraints led to the development of an alternative approach for this study. Rather than determining the cost of existing programs, the project instead developed a model of an adequate bilingual program based on what minimal, but adequate, requirements.

The approach used for the study involved consultation with a panel of experts chosen to represent a wide range of expertise in the field, with members from university staff, Title VII staff, state bilingual program staff, and local school district bilingual staff.

This publication is a summary of a more detailed report which is available upon request from Intercultural Development Research Association.

Basic Methodology The basic methodology followed by the project involved seven steps:

1. Identification of any feature which a panel member felt was important to a bilingual education program.
2. Reduction of this list of features to those which involved quantifiable resources and were considered to be inherently a part of bilingual education.
3. Development of a program structure based on the identified features.
4. Identification of resources and resource quantities needed to implement the program and determination of the effects of such variables as district and program size, year of implementation, and grade level.
5. Identification of resource costs.
6. Development of per pupil costs.
7. Calculation of weighted pupil factors for bilingual education.

Process, Findings, Resource Cost The panel constructed an initial list containing 66 features which individual members felt were associated with bilingual education. This list was then reviewed by the panel as a whole and reduced to 37 items on the basis of two concepts critical to the study: the proxy concept and the general upgrading concept.

Programs such as bilingual education or compensatory education are often found in school districts of below average wealth with students from groups which have been the subject of discriminatory practices. Thus, there can be a tendency to inflate the funding of these program as a proxy either for the taxable wealth which the districts do not have, or for the quality of education in the regular program offered to the students in question. Such an inflation was defined as *proxy cost* and every effort was made to exclude such a cost from the analysis.

The general upgrading concept is more universal in its applicability and can be considered as having two facets:

1. Where the level of resources which can be funded under the basic state/local school finance program is low, the addition of a new program can be seen as an opportunity to acquire resources of use to several programs.
2. There may also be a tendency to attempt to provide a new program with a full complement of the latest technological gadgetry, either simply in belief that new programs should be equipped with the most advanced equipment or with the idea that, by demonstration effect, the quality of education as a whole can be upgraded.

In practical terms, what the panel was asked to do was to identify features which were essential to bilingual education, and to delete those items which were as applicable to the regular monolingual program as to the bilingual program.

Program Structure Given the revised list of features, it was decided that a program consisting of nine subject areas carried through grades K to five was required. The nine subject areas are: Spanish Language Arts, Spanish as a Second Language, English Language Arts, English as a Second Language, Social Studies (including Mexican American Culture and History), Art, Music, Mathematics, and Science.

The decision to limit the program to the fifth grade was not based on any feeling that bilingual education should necessarily cease at that point, but rather was due to the fact that few programs exist in state beyond the fifth grade. It was also felt that more data were needed before program recommendations can be made.

It was further determined that the program would involve the same amount of time per student as the regular monolingual program, i.e., that the bilingual program should be considered the "regular" program for its students.

Resource Areas Given the basic program structure and the features to be included, the next steps involved the identification of specific resources, the quantities of these resources needed for the program, and the effects of various variables considered in order to be able to derive resource costs for the program. Since the objective of the project was to determine the costs of program equivalent to the regular monolingual program funded under the Texas foundation school program, costs were excluded from the analysis if:

1. They were not part of the normal maintenance and operation of a program at the district level (for example, pre-service training costs);
2. They were in areas normally funded entirely at the local level (capital outlay);
3. If they were in areas normally funded wholly by the state (basal textbooks and systems); or
4. If they involved expenses normally incurred on a per district, per campus, per classroom, or per pupil basis regardless of the program areas in which students were found (for example, principals' salaries).

In all, six major resource areas were identified for further analysis: staff, materials, equipment, testing, library needs, and in-service training.

Staff It was determined that what the staff needed for implementing a bilingual education program, in terms of both classroom and support positions, will vary greatly from district to district depending on the bilingual skills and training of existing staff (a factor greatly influenced by past hiring practices). It will also depend on the willingness of the district to make changes in its staff in cases where individuals may have served adequately in the past, but lack the qualifications for providing services to the bilingual program.

If the staffing provisions for bilingual education were based on districts staffed solely by monolingual English speakers, program costs would be extremely high, and the high level of funding would have the effect of rewarding districts with past discriminatory hiring practices.

Panelists agreed that where existing staff has bilingual capabilities and training, no new staff is needed, with the exception of limited additional instructional staff for the classroom where, due to such aspects of bilingual instruction as the need for language modeling in two languages rather than one, more adult/pupil contact time must be given. Therefore, if the purpose of this study was to develop the lowest cost model theoretically possible for the delivery of specified services, only additional classroom needs would be taken into account. However, program support needs would force districts to change support personnel, re-train personnel, or come up with additional local funds to hire staff with the requisite qualifications.

This study chose a compromise position. Specifically, costs were generated for the provision of additional staff funding equivalent to one-half the value of a classroom aide (Aide II) for units of students in bilingual program ADA (19 students in grades K–3; 21 students in grades 4–5), corresponding to the specifications of the variable personnel funding of present Texas law. This provision takes into account the considerable variation in existing school district staff capabilities, allowing for assistance where district staffing may be weak. It does not provide, however, full range of new positions, duplicating for other language instruction what is provided for English language instruction.

Materials This category included such items as supplementary texts, chart tablets, record albums, etc., but did not include major equipment items. Due to variations between programs in the kinds of supplies used, each panelist recommended a set figure for this category based on their own experience, rather than attempting to generate specific resource configurations in this area for individual costing. Responses were averaged and rounded off to whole dollars.

Equipment While panelists initially considered a large number of equipment items such as synchronized cassette/filmstrip machines, record players, opaque and overhead projectors, rigorous application of the proxy and general upgrading concepts resulted in a determination that only language masters (two per classroom in grades K–3; three per classroom in grades 4–5) were a necessary additional equipment cost item, due solely to the specific instructional needs of bilingual education.

Testing Testing needs for bilingual education were considered for three different areas:

1. *Initial Student Screening* Panelists determined that the initial screening involved in ascertaining which students should undergo further language testing, to determine whether or not they should be enrolled in bilingual education, was not a cost which should be charged to bilingual education, since such a service should be available to all students in all districts, regardless of whether or not the results indicate a district's or student's need for a bilingual education program.
2. *Language Proficiency Testing* It was determined that this testing of student language characteristics to ascertain (a) if a student should be enrolled in bilingual education, (b) what kind of program the student needs, or (c) how that program is affecting a student's language capabilities, was a legitimate expense of the bilingual education program, except in those cases where test results indicate no need for bilingual education. Costs were determined for two tests per student per year.
3. *Program Assessment/Student Achievement Testing* While this testing can be considered a part of any program, it was felt that due to the nature of bilingual education, costs should be determined for the administration of one additional achievement test per student per year beyond the testing normally provided.

Library Needs Panelists determined that the additional library needs resulting from the implementation of a bilingual education program should be borne by that program, rather than specifying that a certain percentage of the materials required by normally applicable standards be set aside for bilingual program needs. Using the standards of the Southern Association of Colleges and Schools as a guide (since Texas Education Agency standards were being revised), panelists recommended a set number of books per pupil in bilingual education (seven) which a school library should contain in addition to regular needs, and that $9.00 per student per year be allocated for subsequent purchases.

In-service Training Due to the shortage of trained bilingual teachers in Texas, the distinction between in-service and pre-service training has become clouded. Districts are finding that local training is often necessary before available teachers can function effectively in the classroom. Panelists determined that this often extensive re-training needed by bilingual program teachers in order to perform adequately in the classroom, should be considered pre-service training even if carried out by a school district.

In-service training needs for such purposes as keeping teachers up-to-date on recent developments in the field, and reviewing new texts, were determined to be five days per year. This quantity was felt to be a rational allocation of time for program related in-service training (regardless of the program under consideration) from within the 10 days allotted for in-service training under state law. As such, it represents no additional cost for bilingual education.

Variables A wide variety of variables such as grade level, year of implementation, district and program size, etc., which could possibly affect bilingual program costs, was considered. However, only the first two named above—grade level and year of implementation—resulted in specific recommendations from the panel as a whole.

Per Pupil Costs Per pupil costs were generated for each of the above categories using costs of commonly used or state-recommended materials derived from information obtained from state records, school district records, and costs indicated by suppliers and manufacturers. Where resource needs were indicated on a per classroom basis, a unit of 25 students per classroom was used to reduce costs to a per pupil basis. Add-on per pupil in ADA as modified by the variables indicated above are shown in Figure 1.

Bilingual Program Weights The program weights presented below (Figure II) represent total bilingual program costs as multiples of the regular monolingual program costs for each grade. Calculation of these figures involved a conversion of the per pupil costs listed above from costs per ADA to costs per full-time equivalent (the statistical equivalent of a student who spends all of his or her time in a program), and the derivation of regular monolingual program costs per FTE under the Texas foundation school program funding categories of current operating expenses and personnel.

Conclusions During the course of the study, it was found that many resource items which would certainly be included in an ideal program are not needed for an adequate program; furthermore, many resources or activities (such as in-service training), while a necessary part of the program, require no additional funds.

Additionally, it was found that the staff needed to implement bilingual education in individual school districts will vary greatly depending on the bilingual capabilities and training of existing instructional and administrative personnel.

Finally, project results indicate the present Texas funding of bilingual education programs ($25 per pupil above regular monolingual program allocations) is wholly inadequate.

FIGURE II *BILINGUAL PROGRAM WEIGHTS*
(in multiples of monolingual program costs for each grade)

	Grade					
Year	*K*	*1*	*2*	*3*	*4*	*5*
1	1.31	1.42	1.41	1.41	1.36	1.36
2	1.25	1.35	1.35	1.35	1.30	1.30
3	1.25	1.35	1.34	1.34	1.30	1.30
4	1.25	1.34	1.34	1.34	1.30	1.30

> It was not much of a surprise to learn from the Texas analysis that the bilingual education program was grossly underfunded in state appropriations. The minimum need of $243.77 per pupil for the start-up year in kindergarten was almost 10 times the $25 per pupil being provided in the state program in that year.

The study further recommended that similar costing efforts be undertaken in other states with large target populations to determine the degree of compatibility between states.

The IDRA study was subsequently validated by a similar study conducted by the Houston School District to determine financial needs of their bilingual program. The study was conducted by Dr. Herbert L. Alston and presented to the Houston board as *Estimates of Personnel Needed and Cost of HISD Bilingual Education Program* in 1977.[86] Although the Houston costing methodology differed slightly from the IDRA study, the overall per pupil costs were quite similar. The use of the IDRA methodology by the Houston district fulfilled one of the prime purposes of the original IDRA study—to provide a methodology which could easily be adapted by school systems for estimating the cost of a bilingual education program.

Requests from other states for doing similar analyses of bilingual education costs led to the formation of a special project at IDRA, the Bilingual Education Cost Analysis (BECA) Project. Maria del Refugio "Cuca" Robledo was appointed director of the project, and funds for implementation were acquired from the Bilingual Education Office in the U.S. Department of Education.

Using the same methodology developed for the Texas study, Maria Robledo conducted studies in Colorado and Utah.

In the Colorado study, Dr. Robledo was assisted by Robert Zarate, Michele Guss Zamora and José A. Cárdenas from IDRA staff. The Colorado panel of experts included:

Dr. Albert Louis Aguago	Denver Public Schools
Dr. Leonard M. Baca	University of Colorado
Alicia Valladolid Cuarón	Metropolitan State College
Lawrence A. Egan	Colorado Department of Education
Richard L. Garcia	Boulder Valley Re-2 Schools
Alex Marquez	San Luis Valley BOCS
Benard D. Martinez	Center for Cross-Cultural Ed
Jerry Minjares	Mapleton I Schools
Rebecca Nuñez	Colorado Department of Education
Dr. Arlene Vigil Sutton	Bilingual Bicultural Res Center
Ernest Andrade	Greeley 6 Schools
Jose Cordova	University of Northern Colorado
Geraldine Balesan Donachy	Poudre R-1 Schools
Alicia Garcia	Huerfano Day Care
Robert E. Hall	Huerfano Re-1
Teresa Herrera	Ruango 9-R Schools
Rosalie Martinez	Colorado Department of Education
Alfredo Nevarez	Harrison 2 Schools
Betty Ortibez	Huerfano Re-1 Schools
Tim Roybal	Montrose County Re-1J

The results of the Colorado Cost Analysis Study were not inconsistent with the Texas study. The areas of expense were identical with those identified in Texas, although the weights derived were smaller than those identified in the Texas study. The following are the pupil weights for additional expenses in a bilingual program, expressed as multiples of a comparable monolingual program:

Grade level:	*pre-K*	*K*	*1–3*	*4–6*	*7–12*
Start-up	1.22	1.18	1.17	1.17	1.12
Maintenance	1.19	1.16	1.15	1.15	1.11

The Utah study was conducted by the same IDRA staff members who participated in the Colorado study. The following panel of experts was used:

Louis Barraza	Weber State College
Lawrence Carillo	Ogden City School District
Helen Dabling	Ogden City School District
Norma Denver	Uinta-Ouray Reservation
Manuel Fernandez	Council of Spanish Speaking (NPO)
Dr. Elliot Howe	Utah State Board of Education
Beartriz Martinez	University of Utah
Preddy Oseguera	Salt Lake School District
Sharon Schonhaut	Tooele School District
Abraham Tapia	Jordan School District
Dale Vigil	University of Utah

The following weights were derived by the Utah panel of experts:

Grade level:	*Kinder*	*1–6*	*7–12*
Start-up	1.19	1.25	1.20
Maintenance	1.17	1.22	1.19

The results of the three studies were fairly consistent, considering that school financing differed among the three states and the studies in Colorado and Utah were conducted more than two years after the Texas study. The dollar amounts determined needed for the support of the programs in the last two states differed from the amount determined in absolute dollars in the Texas study. However, all three studies converted dollar amounts into weighted pupil factors which remained fairly consistent, in spite of the three panels having slight differences in their determination of essential needs and their cost.

In spite of IDRA's findings on the inadequacy of funding for bilingual education, state appropriations continued to decline after 1977. Original requests for bilingual funding made by the Texas Education Agency were cut in half in state appropriations. By 1978, the amount of funds requested by TEA ($5,895,000) was one-half of the amount requested the previous year ($10,857,000). The low level of support for bilingual programs and the even lower level of appropriations were accompanied by a substantial increase in the number of eligible pupils identified in need of the program, and the number of pupils actually being served. The number identified increased from 170,189 in 1974–75, to 209,957 in 1978–79. The number served increased from 26,628 in 1974–75 to 116,519 in 1978–1979.

The reduced appropriations for bilingual programs were further diminished by TEA allotments for administrative costs. The $25 per pupil administrative cost remained constant as appropriations were reduced, resulting in a smaller percentage of the precious funds trickling down in support of instructional activity.

Using data from the Education Commission of the States, IDRA determined that Texas funding for bilingual education in 1978–79 was the second lowest among states proving such categorical funds. Massachusetts led the nation with $1,247 per pupil while Texas was expending a measly $44. Only Louisiana with $20 per pupil provided less support for bilingual education.

IMPROVED FUNDING

The year 1981 became a banner year for bilingual education in Texas. The intervention suit in *U.S. v. Texas* that TEE/IDRA initiated in 1973 had finally produced a ruling. Judge William Wayne Justice found that the absence of a bilingual program constituted a denial of equal educational opportunity for limited English proficient children in the state.

In the wake of the Justice decision, Lt. Gov. Hobby and House Speaker Clayton convinced Gov. Bill Clements of the need to appoint a special Governor's Task Force on Bilingual Education. The body was composed of 15 members and included Sen. Carlos Truan and Rep. Matt Garcia, both strong supporters of bilingual education and sponsors of bilingual legislation.

The task force met six times and received extensive testimony from a variety of experts in bilingual education, English as a second language (ESL) instruction, school finance and teacher training and certification. By May 1981, after much deliberation, the task force issued a list of comprehensive recommendations very supportive of bilingual education, which provided the framework for legislation to be considered by the legislature prior to the end of the session. The list included a specific recommendation that the legislature provide adequate funds at a significantly higher level than what was then being provided.

The Justice court order in *U.S. v. Texas,* strongly reinforced by the governor's task force, resulted in the enactment of SB 477 in 1981, which was to become the legal structure for bilingual and ESL education until the present.

Funding for bilingual education was increased to $50 per pupil with an additional $12.50 per pupil in an ESL program.

School finance reform became such a controversial issue that the 68th Legislature adjourned in 1983 without the enactment of any school finance legislation (see Chapter 4). The failure did lead to the creation of the Select Committee on Public School Education (SCOPE) with Ross Perot as chairman to conduct a massive study of education in Texas and formulate recommendations for the legislature.

Ross Perot had already travelled throughout the state criticizing the educational system and had already formed some strong opinions on the evils of the system and the type of reform needed. One such opinion was that bilingual education was a detrimental program which should be abolished.

Although IDRA staff were sure that ample opportunity would be provided to present testimony before SCOPE, we were interested in presenting our school finance and atypical student agenda to Perot in a much better setting, and with a longer time span than that which was to be provided in hearings. I contacted Ross Perot, and he agreed to a meeting with IDRA staff on the educational issues of most importance to minority students.

IDRA staff met with Ross Perot on October 13, 1983. The meeting began at 9:00 a.m. and lasted through lunch until late in the afternoon, giving us more than seven hours of uninterrupted discussion. Our discussions with Perot were not easy. Mr. Perot had little technical background in the issues we were discussing, and he has a strong tendency to formulate quick, easy, simplistic and dysfunctional solutions. When we spoke about equalization aid as a necessary response to disparities in school district tax bases, he immediately concluded that if some districts had a lot of local funds and others did not, the obvious solution was to take money from the rich school districts and transfer it to the poor ones. Neither the legal precedence against this in *Love v. Dallas,* nor the obvious reluctance of high wealth districts to part with their wealth appeared to be serious obstacles to him.

Two things were accomplished that day. By the end of the meeting, Perot had a much better insight into educational problems facing the state, including the plight of low wealth districts. Second, the persuasive arguments made by IDRA staff having an awesome knowledge of the characteristics and needs of limited English proficiency children, changed his opinion on bilingual education. After hearing from me and such eminent experts as Gloria Zamora, Albert Cortez, Alicia Salinas Sosa, Abelardo Villarreal, Maria "Cuca" Robledo, Bradley Scott and others, Ross Perot became a supporter of bilingual education. At the conclusion of the meeting, he pledged that he would support bilingual education through the SCOPE deliberations and would address the need for adequate funding.

During the SCOPE hearings, a large number of staff members testified on three major issues central to the committee's recommendations on bilingual education: the role of the native language, the effectiveness of bilingual programs, and parental support of bilingual education. IDRA staff members testifying on November 29, 1983, included Dr. Blandina "Bambi" Cardenas Ramirez, Dr. Gloria Zamora (at that time president of the National Association for Bilingual Education), Dr. Steve Jackson, Dr. Maria Torres and Dr. Albert Cortez.

The advocacy by IDRA and other organizations was effective, and Ross Perot kept his word and supported our testimony. In House Bill 72, which finally emerged during a second called session of the 68th Legislature from June 4 to July 2, 1984, bilingual education survived and was assigned a special program weight in the weighted pupil approach used to modify the foundation school program. Bilingual education was assigned a weight of .10, which produced added-on funds of 10 percent of the basic allotment. The basic allotment stipulated in HB 72 was $1,290 per student in ADA the first year of the biennium (1985–86), and $1,350 the second year (1986–87). Thus, support for bilingual education was increased from $50 per pupil to $129 the first year and $135 the second year.

In spite of the increase, the weight given to bilingual education (.10), was far short of the minimum weight of .30 identified in our bilingual cost analysis studies. However, compensatory education was given a .20 weight, and many of the students in bilingual programs also qualified for compensatory education funding.

Unfortunately, the rest of the IDRA advocacy agenda did not fare as well in the recommendations of the SCOPE committee nor in legislative action. As a result of the failure of the legislature to address unlimited local enrichment, one year after the infusion of $4 billion in House Bill 72, disparities between high and low wealth school districts were higher than before its enactment. (see Chapter 7 for more information on the history, provisions and impact of HB 72)

The increased funding of bilingual education in HB 72 did not eliminate funding problems. The amount provided was much less than the amount needed. Most limited English proficient students were in low wealth districts, and these districts did not have the necessary resources to augment the inadequate state funding. In addition, a new problem surfaced as special program funding moved from categorical funds to foundation school program entitlements. The new legislation gave school administrators wide discretion in the use of the entitlement funds. School administrators had never been supportive of bilingual education, nor of the school population requiring the program. IDRA received numerous complaints that since the institution of the weighted pupil factor, teachers had less funds for bilingual instruction than they had received prior to the increased funding. An IDRA review of school financial audits indicated that a substantial amount of bilingual funding was being used for administrative costs, and an equally substantial amount was being used for addressing school needs having nothing to do with bilingual programs.

IDRA successfully promoted state legislation that would restrict the use of special program funds for the support of the special program and limit the amount that could be used for administrative costs. Hearings on the proposed legislation resulted in massive opposition from school administrators. Testimony commonly provided was that the denial of the use of bilingual funds for non-bilingual purposes would present an hardship for school districts which depended on the bilingual funds for non-bilingual needs. The legislature was not very sympathetic to these pleas, and restrictions requiring that bilingual program funds be spent on bilingual programs were made a part of the law.

Improvements in bilingual education through SB 477 and HB 72 were followed by a backlash against bilingual education reminiscent of the anti-German sentiments during World War I. (see Cárdenas, José A., *Multicultural Education: A Generation of Advocacy,* Chapter 2: Bilingual Education, for a description of the opposition to bilingual education by Education Secretary William Bennett, A F of T director Al Shanker and the English Only movement)

As a result of the massive efforts of these xenophobes, bilingual education and the necessary funds have lived a precarious existence in the state and national education systems. It has continued as a viable educational approach only because of the Herculean efforts of bilingual advocates and its unquestionable success in classrooms throughout the country.

CHAPTER 6

PROPERTY TAX EQUITY

INTRODUCTION

One of the most persistent myths in the Texas history of school finance is the belief that the adequacy of funds in high wealth school districts is attributed to the willingness of the residents of the district to tax themselves at high rates in order to produce the extensive funds in support of their children's education.

Not only is this not true, but it is a complete reversal of reality. Low wealth school districts have traditionally taxed at high rates, but the low value of taxable property has produced little revenue. On the other hand, high wealth school districts have taxed themselves at extremely low rates, yet the high value of taxable property has produced an abundance of revenues. Prior to the *Edgewood* litigation, it was not unusual for the poorest school districts in Texas to tax at a rate of $2.00 per $100 of market value and raise little money to augment the state program. Very high wealth districts often had tax rates of as low as $0.03 per $100 valuation, and produced enough revenue to afford luxury in educational programs and facilities.

This phenomenon was identified early by IDRA in its advocacy efforts, and it was labeled "The Texas Tax Paradox." The consistent paradox was that low wealth districts taxed high and produced low yields, while high wealth districts taxed low and produced high yields.

In its advocacy role, IDRA promoted two basic reform measures. The first was revenue equity, which provided all districts with access to similar resources, with the quality of education available to students being based on the wealth of the state as a whole, rather than quality being based on the accidental disparate distribution of wealth in the various communities in the state.

The second reform measure was taxpayer equity, which implied equal revenue for equal tax effort among all of the districts in the state.

Chapter four focuses on the advocacy and litigation for revenue equity. This chapter, which covers the same period, describes the historical quest for taxpayer equity.

Similar priority was given to both issues but with the employment of Craig Foster in 1975, one of the state's most knowledgeable persons on taxation, the school finance reform effort was divided within IDRA, with José A. Cárdenas heading the reform effort, Albert Cortez heading the resource equity issue and Foster, heading the property tax equity issue.

When Craig Foster established an independent entity in 1982, the Texas Association of Property-Poor Schools, which later was re-incorporated as the Equity Center, IDRA staff continued to work with Foster, who provided most of the leadership for property tax equity up to the *Edgewood* litigation. During the litigation IDRA provided the research and technical assistance in both areas for the plaintiff school districts, and the Equity Center provided similar services for the plaintiff-intervenor school districts, although there was extensive sharing between the two entities.

EARLY RESEARCH AND DISSEMINATION

Early in its history, TEE/IDRA initiated research into the property tax inequities. The first report on this topic was in the August 1973 *Newsletter* which looked at U.S. Department of Housing and Urban Development data on poor quality housing in blighted urban neighborhoods, and noted that it was being taxed at substantially higher rates than other property in the community.[87]

In November 1974 IDRA was questioning the practice of using unequalized assessment values in computing the county economic index, which in turn determined the amount of state aid provided under the minimum foundation program.[88] At the same time, Texas Attorney General John Hill issued a legal opinion challenging assessment practices. Our criticism of assessment practices is tempered with the caveat that better assessment would not in itself provide equal school financing. It was simply a necessary first step in the reform process.

Assessment practices were only a part of the problem in the Texas system of school finance. In a four-part series published in December 1976[89] and January,[90] February[91] and March 1977[92] issues of the *IDRA Newsletter*, Craig Foster presents a superb analysis of property taxation in Texas, problems in the system and the impact of system inadequacies. Since this series is probably the best analysis of past inadequacies in the system and provides keen insights into problems and effects, the entire series is presented below for its historical and research value:

> **An Overview (Craig Foster, December 1976)**
> The ad valorem property tax is the biggest producer of government revenue for the state of Texas. Nearly 25 percent of total state and local government dollars come from the property tax. Federal aid is second at about 20 percent. The general sales tax provides 15 percent of the total.
>
> Property tax revenue in Texas now totals approximately $2.5 billion per year. About 60 percent of total property tax revenue, or $1.5 billion, is raised by local school districts for public school operation and construction.
>
> Even though property taxes have been rising throughout the state in recent years, Texas is not a high property tax state. In per capita property taxes Texas ranks 30th among the 50 states and 9th among the 11 most industrialized states.
>
> Under Texas law, all property not specifically exempted is taxable on an equal and uniform basis and in proportion to fair market value. No general category of property is exempted, but specific parcels of various categories may be fully or partially exempted on the basis of ownership and use.
>
> All property is either *real* or *personal*. Real property (realty) includes the land and all that is within it or permanently fixed to it: the surface, minerals at and below the surface, space above the surface, buildings, fences, paving, etc. All other property, whether tangible or intangible, is personal property (personalty). Tangible personalty includes automobiles, livestock, office machines, business inventories, extracted minerals, furniture, clothing, art works, etc. Intangible personalty includes stocks, bonds, cash on hand and receivable, business goodwill, etc.
>
> Under federal and state law, most property owned and used for governmental, religious, charitable and educational purposes is fully exempted from property taxation in Texas. Some other property owned and used for nonprofit purposes is similarly exempted.
>
> State law also exempts parts of the value of (1) all homesteads for state tax purposes and some county tax purposes, (2) homesteads of the elderly for local tax purposes (at local option), and (3) property owned by disabled veterans. Under another form of partial exemption, certain agricultural lands are taxable at productivity value, rather than market value.
>
> Provisions of the Texas Constitution require that the taxes levied by a taxing jurisdiction be equal for equal amounts of taxable value within and among all categories of property. There is no legal requirement that taxes be levied in proportion to benefits received from the taxing jurisdiction. Nor is there any general mandate that taxes be equitable or fair.
>
> Equality and equity can be best distinguished by illustration. In the division of food between a poorly fed person and a well fed person, equality demands that each receive one half. Equity demands that the poorly fed person receive a larger portion. The partial exemption of the homesteads of the elderly represents a departure from equality that is designed to provide greater equity.
>
> Except for certain agricultural lands, the legal tax base in Texas is fair market value as of the official date of assessment (usually January 1 of each year). Fair market value is most simply defined as the most probable price at which a property would sell, assuming typical sellers and buyers and prevailing market conditions. Fair market value is never an absolute, knowable value; it must be estimated. The process of estimating value is known as "valuation," and the most accurate form of

valuation is "appraisal." A bona fide market value appraisal, unlike other forms of valuation, is a documented, unbiased opinion of fair market value.

Each taxing jurisdiction has a property tax administrator known generally as the assessor-collector, or, for brevity, the tax assessor. The assessor is either elected, appointed or designated by law. The major functions of the assessor are:

1. **Inventory:** the process of (a) discovering all property located within the jurisdiction, (b) determining whether and how each property is taxable, and (c) listing and describing those properties which are found to be fully or partially taxable by the jurisdiction.
2. **Valuation:** the process of estimating the full taxable value (usually fair market value) of all property listed on the inventory of taxable property.
3. **Computation:** the process of (a) applying the jurisdiction's assessment ratio (percentage of full taxable value) to calculate assessed value, (b) deducting exempt amounts of assessed value, (c) placing the properties and their taxable assessed values on the tax roll, and finally, (d) applying the jurisdiction's tax rate to determine the amount of tax due on each property.
4. **Collection:** the process of billing taxpayers for taxes due, accounting for collections, and pursuing the collection of delinquent taxes.

While the assessor is required to value all property on an equal and uniform basis, the primary responsibility for equalizing values within a jurisdiction lies with the jurisdiction's Board of Equalization (BOE). BOE members are either designated by law or appointed by the jurisdiction's governing body. BOE's are authorized to seek out inequalities and to act on their own initiative, but most simply react to taxpayer complaints of overvaluation.

A taxpayer who is dissatisfied with values set by the BOE may appeal to the jurisdiction's governing body in some cases, and may ultimately seek relief in state court in any event. However, appeals to governing bodies are usually ineffective, and current practice greatly favors the taxing jurisdiction over the taxpayer in Texas courts.

Property Tax Arithmetic: Virtually all tax formulas can be reduced to the basic equation: BASE × RATE = TAX. For some such as the sales tax, the formula is no more complicated than the basic equation. For others, such as the federal income tax and the Texas property tax, the formulas involve a variety of adjustments in the base or rate, or both.

The following are illustrations of some common tax computations.

Illustration A

State and local sales tax at a combined rate of 5%.
BASE: Purchase Price = $10
RATE: × Percent of Purchase Price: × 5%
TAX: = Sales Tax = 50¢

Illustration B

School District X's property tax on a $30,000 home, owned and occupied by an elderly couple. District assessment ratio and rate are 50 percent and $1.50. Old-age exemption of $3,000 has been established by school board under local option law.

Base: Fair Market Value = $30,000
Adjustment #1: × Assessment Ratio: × 50%
Adjusted Base #1: = Gross Assessed Value = $15,000
Adjustment #2: — Exempt Assessed Value: −$3,000
Adjusted Base #2: = Net Assessed Value = $12,000
Rate: × Amount per $100 of Assessed Value: × $1.50/$100
Tax: = Property Tax = $180

Illustration C

School District Y's property tax on a $30,000 home. There is in effect no adjustment by assessment ratio because the district's ratio is 100 percent. The rate is $1.50. Owner-occupant does not qualify for any exemption.

Base: Fair Market Value $30,000
Adjustment(s): None
Unadjusted Base: = Assessed Value = $30,000
Rate: × Amount per $100 of assessed value: × $1.50/$100
Tax: = Property Tax = $450

Illustration D

School District Z's property tax on farmland worth $30,000 but qualified for agricultural use valuation. District assessment ratio and rate are 50 percent and $ 1.50

Base: Productivity Value = $10,000
Adjustment #1: × Assessment Ratio × 50%
Adjusted Base #1: = Assessed Value = $5,000
Rate: × Amount per $100 of assessed value: × $1.50/$100
Tax: = Property Tax = $75

Nearly all assessors in Texas use computations essentially like those in Illustrations B, C and D. Both the data and computations are typical and lawful.

The law prohibits an assessment ratio in excess of 100 percent; that is, property must not be assessed at more than 100 percent of fair market value. Most taxing jurisdictions use an assessment ratio of less than 100 percent. A relative few jurisdictions use a 100 percent ratio; fair market value and assessed value are the same in such cases, as shown in Illustration C.

Tax rates are limited by provisions of the Constitution, state statutes, or local ordinances and orders. The maintenance tax rate limit for independent school districts, for example, is set by statute at $1.50 per $100 of assessed value. Exemptions are likewise established by state and local law. For example, where the old-age exemption is granted by local option, it is required by state law to be at least $3,000 and may be set at a greater amount by local law.

The laws of the state, as interpreted by the courts, require that the assessment ratio, tax rate and applicable exemptions be uniformly applied for all properties in a taxing jurisdiction. Nearly all Texas jurisdictions comply in the sense that the basic arithmetic is essentially uniform within each jurisdiction.

Nevertheless and unfortunately, the actual determination of property taxes in Texas is not as simple and straightforward as the computations in Illustrations B, C and D. Inequalities, which will be discussed in detail in the next issue, are both abundant and flagrant. The point to be made here is that most problems of inequality arise not from mistakes or lack of uniformity in the arithmetic, but rather from inadequacies and lack of uniformity in the procedures used to determine fair market value.

Problems with Taxing Property (Craig Foster, January 1977)

Introduction Inequalities arise in each of the four major functions of the assessor and frequently remain unresolved in the formal equalization process.

The inequalities that arise in the *computation* and *collection* functions are relatively minor in comparison to those which occur elsewhere. The assessor may occasionally make intentional or unintentional errors in computing the amount of taxes due. More serious is the frequent failure of the assessor to pursue effectively the collection of delinquent taxes. But in neither case are the resulting inequalities as serious and extensive as those which arise in the *inventory* and *valuation* functions.

Incomplete Inventory—The Unknown Quantity It is generally agreed that no taxing jurisdiction in Texas includes each and every item of taxable property on its tax roll. That is, every jurisdiction's inventory is incomplete.

It is also the case that in most jurisdictions many of the properties that are on the tax roll are improperly or inadequately described, or are listed with "owner unknown." The taxes on such properties are often uncollectible, and the result is the same as if the properties were not on the tax roll.

Taxable property which does not appear on the tax roll, or is listed in a manner which precludes effective taxation, may be referred to as "omitted" or "escaped" property. "Escaped" is perhaps the better term because it more correctly describes all of the property in question. The amount of escaped property varies from jurisdiction to jurisdiction; it is unknown and essentially incalculable for any given jurisdiction.

Taxable property escapes taxation for a variety of reasons. In some instances, an entire category of property escapes because it is considered legally or administratively impractical to inventory or value individual items within the category. Most forms of intangible personalty (stocks, bonds, cash on hand and receivable, business goodwill), as well as household furnishings and clothing, are examples. No Texas jurisdiction is effectively taxing such property on a comprehensive basis. Indeed, no state in the nation has successfully established a workable system for taxing intangibles at the rate levels applicable to other property.

In other cases an entire category escapes because of state or local political considerations. Family automobiles fall into this group, although many, but still a minority of Texas jurisdictions, are effectively taxing all types of motor vehicles and the techniques for doing so are readily available.

Another major group of escaped properties includes individual items of property within categories which are generally and regularly taxed. For example, while every taxing jurisdiction normally taxes residential property, one or a few (and sometimes many) houses in each subdivision may not appear in the assessor's records. An examination of the records usually indicates that in these instances the lots, but not the houses, are included in the values shown on the tax roll. This type of omission probably occurs most often as a result of negligence, although the possibility of intentional omission should not be ruled out, particularly where relatively new commercial and industrial structures are involved.

Incorrect property descriptions and insufficient ownership information probably occur most often for rural and undeveloped tracts of land. It is not unusual for an assessor to first list all such land whose description and ownership are readily known, and to then list the balance of acreage in the various parts (abstracts) of the jurisdiction in lump sums with the owners shown as "unknown." At least temporarily (usually until delinquent taxes are paid in connection with a sale), and sometimes permanently, the property escapes taxation because the taxes are uncollectible.

Many Texas assessors never make an independent inventory of taxable property. They merely list whatever property the jurisdiction's taxpayers choose to report (render). These assessors are sometimes referred to as "rendition takers." The potential for escaped property is obvious. The potential for undervaluation of property by rendition takers is even more serious.

Finally, some property escapes taxation by virtue of special statutory provisions which effectively contradict basic constitutional principles. In particular, insurance companies and savings and loan associations are permitted certain questionable deductions from their total assets in the computation of their values for tax purposes. According to one of the state's leading tax attorneys, "The deductions allowed insurance companies and savings and loan associations are large enough to grant them substantial immunity from taxation."

Undervaluation—A Matter of Degree Studies of Texas property taxation over the years have repeatedly shown that virtually all taxing jurisdictions in the state undervalue property for tax purposes. That is, the assessor's valuation (full value, as distinguished from assessed value) is consistently less than fair market value. There are minor exceptions to the rule. Occasionally, and usually without intent, individual items of property are overvalued. Less frequently, and usually with the implied consent of the taxpayers involved, selected properties or categories are somewhat overvalued. As a rule, then, the important questions have to do with *how much*, not *whether* property is undervalued by the assessor.

The question of undervaluation can also be expressed in terms of what portion or percentage of fair market value is represented by the assessor's valuation; that percentage may be referred to as the valuation ratio. Ideally, the valuation ratio would always be 100 percent; a lesser percentage indicates undervaluation. For example, if the assessor's valuation of a $30,000 (fair market value) home is $24,000, the valuation ratio is .80 ($24,000/$30,000) or 80 percent, and the home may be said to be undervalued.

Some deviation from fair market value is acceptable because the determination of fair market value is an inexact science. Accordingly, even when the assessor is making a bona fide effort to determine fair market value for each item of property on the tax roll, the valuation ratio for individual items may range from 85 percent to 115 percent, and the average valuation ratio may range from 95 percent to 105 percent. Such ranges represent the optimum or, in other words, the best valuation practice that can reasonably be expected.

A number of recent studies indicate that virtually no taxing jurisdiction in Texas achieves the optimum and that only a few even come close. In 1975 the Texas Legislative Property Tax Committee (LPTC) completed the most exhaustive and statistically rigorous study of local assessment practice ever conducted in the state. The LPTC study covered five categories of realty (single-family, residential, multi-family residential, commercial, industrial and rural) in 35 randomly selected school districts. Expressed in terms of valuation ratios, this is what the LPTC found:

1. The valuation ratio for all districts combined was 60 percent. This means that for every $1 million of fair market value, the valuations of the assessors totaled only $600,000. That is, $400,000 of every $1 million was lost to undervaluation. This statewide loss to undervaluation was estimated at $80 billion.
2. The average valuation ratios by district ranged from a low of 11 percent to a high of 81 percent. Thus, the best performance among the 35 districts fell 14 percentage points short of the optimum range.
3. Average valuation ratios tend to be
    (a) lowest in districts with 100 or fewer students, highest in districts with 3,000 or more students
    (b) lowest in south and far west Texas, more or less equal in other regions
    (c) lowest for industrial (58 percent) and rural (39 percent) property highest for single-family residential (71 percent) and commercial (77 percent) property; and
    (d) lower for high value property than for low value property with every category, especially within the single-family residential and industrial categories.

One of the most striking and disturbing findings of the LPTC study is reflected in 3(d) above. To be more explicit, within every category of property the valuation ratios for individual items of property tend to decrease as values increase. It is the rule rather than the exception to find, for example, valuation ratios of 80 percent for $30,000 homes and 50 percent for $100,000 homes in the same jurisdiction.

These and related findings from other studies suggest that an important factor is missing from the tax computations illustrated earlier. Indeed there is a hidden factor—a missing link—that is neither well known nor readily accessible to the public. That missing link is the valuation ratio itself.

Illustration B from the December *Newsletter* is reprinted below for comparison with the accompanying revision of Illustration B which puts the missing link in place. The missing link is depicted as Adjustment #1. However, unlike the other components of the illustration, the valuation ratio as such is not part of the assessor's actual computation. Here it merely represents the *effect* of a combination of factors in the valuation process.

Illustration B

School District X's property tax on a $30,000 home, owned and occupied by an elderly couple. District assessment ratio and rate are 50 percent and $1.50. Old-age exemption of $3,000 has been established by school board under local option law.

Base: Fair Market Value: $30,000
Adjustment #1: × Assessment Ratio: × 50%
Adjusted Base #1: = Gross Assessed Value = $15,000
Adjustment #2: − Exempt Assessed Value: − $3,000
Adjusted Base #2: = Net Assessed Value = $12,000
Rate: × Amount per $100 of Assessed Value: × $1.50/$100
Tax: = Property Tax = $180

Illustration B (revised)

Base: Fair Market Value: $30,000
Adjustment 1: × Valuation Ratio: × 70%
Adjusted Base #1: Assessor's Valuation = $21,000
Adjustment #2: × Assessment Ratio: × 50%
Adjusted Base #2: Gross Assessed Value = $10,500
Adjustment #3: − Exempt Assessed Value: − $3,000
Adjusted Base #3: Net Assessed Value = $7,500
Rate: × Amount per $100 of Assessed Value: × $1.50/$100
Tax: = Property Tax = $112.50

(Note the difference in tax amount. What should have been a tax of $180 becomes $112.50, or 38 percent less.)

The foregoing clearly indicates that it is not enough to establish that a uniform assessment ratio is applied by the assessor. The more important question has to do with the valuations to which the ratio is applied, in other words, not what *percent*, but percent of *what*. In this context, *what* represents a set of assessor's valuations, most of which are probably less than fair market value, and among which the deviations from fair market value probably vary widely.

Texas Property Tax System (Craig Foster, February 1977)

Components of Undervaluation An understanding of the source and nature of value-related inequalities in the Texas property tax system requires first a determination, and then an explanation of the relationship between the assessor's valuation and fair market value. This relationship was defined in the January *Newsletter* in terms of the valuation ratio, that is, the percent that the assessor's valuation is of the fair market value.

The assessor's valuation is relatively easy to ascertain. It is found by simply dividing the assessed value by the assessment ratio, both of which can be readily obtained by inquiry to the local tax office. For example, if the assessed value recorded on the tax roll is $30,000 and the jurisdiction's declared assessment ratio is 50 percent the assessor's valuation is $60,000 (30,000 ÷ .50). The fair market value, on the other hand, may not be known even to the assessor and can usually be ascertained only through an appraisal or, in the case of single-family residential property, through an analysis of comparable sales.

Once a valuation ratio has been determined, its explanation requires knowledge of its components, which often reflect a complex set of illegal or extralegal practices of the taxing jurisdiction and its taxpayers. The three major identifiable components of a valuation ratio are, in the terminology of this author: (1) the valuation standards ratio, (2) the special adjustment ratio, and (3) the general adjustment ratio. The first is always present; the second and third may occur singly, or in combination, or not at all.

Valuation Standards Ratio The valuation standards ratio expresses the percentage relationship between (1) the initial unadjusted value derived by whatever valuation standard the assessor uses, and (2) the value that would be derived if the fair market value standard were used. If, for example, the assessor's initial valuation of a bank's stock based on the "book value" standard is $75,000,000, while the value based on the fair market value standard is $100,000,000, the valuation standard ratio is .75 ($75,000,000 ÷ $100,000,000), or 75 percent.

Any valuation standard other than the fair market value standard is, of course, improper. "Original cost value," "book value" and "self-reported value" are probably the three most common non-market standards used by Texas assessors. These non-market standards normally produce valuation standards ratios which are substantially less than 100 percent. It should be carefully noted that the assessor whose valuations are based on these non-market standards usually has no precise knowledge of the corresponding fair market values, and thus does not know the valuation standards ratios that are, in effect, being utilized. However, the assessor normally does understand that the ratios are something less than 100 percent.

Special Adjustment Ratio Special adjustment ratios consist of factors applied to individual items of property or selected categories of property, and are usually based on claims that the adjustment is required to bring that item or category "into line" with other property. For example, bankers frequently complain that by virtue of a special valuation statute, the intangible property of bank shareholders is overtaxed relative to other property. Taxing jurisdictions often quietly grant discounts on bank stock in response to such complaints.

The "lifetime value" system provides another example of special adjustment ratios. Under the lifetime value system the taxpayer and assessor negotiate a single value that is to be used for tax purposes over the economic life of the property. That value is usually at or near the midpoint between the original cost value and the salvage or junk value. The lifetime value system is used most often for utility and manufacturing facilities, and generally works to the advantage of the owners of such property.

In some instances the special adjustment ratio is easy to compute. If bank stock is discounted 15 percent for example, the special adjustment ratio is 85 percent. In the case of the lifetime value system, the determination of the special adjustment ratio is relatively easy in the first year, but becomes increasingly difficult thereafter. If, for example, the lifetime value is set at 55 percent of original cost value, the special adjustment ratio in the first year is 55 percent (provided the original cost value is representative of fair market value). Thereafter, however, an accurate determination of the special adjustment ratio requires knowledge of applicable depreciation factors. In many instances negative depreciation (appreciation) occurs. In effect, the special adjustment ratio then decreases, giving the taxpayer an additional advantage.

General Adjustment Ratio General adjustment ratios consist of factors applied uniformly to all or virtually all properties. They are most often used to provide a margin of safety for the taxing jurisdiction and the assessor. This safety factor tends to reduce the number and vigor of taxpayer appeals to the board of equalization. The assessor, for example, may routinely reduce all initial valuations by 10 or 15 percent. This results in general adjustment ratios of 90 or 85 percent, respectively. Often such adjustments are built into the appraisal procedures so as to insure the desired outcome. For example, in preparing cost schedules on housing construction, the assessor may deliberately understate actual costs. First, it should be noted that the general adjustment ratio, if any, plays little or no role here because by definition it is uniformly applied to all, or virtually all property in the jurisdiction. Special adjustment ratios, to the extent that they are fully justified as equalizing factors, are likewise innocent. Conversely, to the extent that they are not so justified, special adjustment ratios do contribute to the problem of unequal valuation ratios.

Even lower general adjustment ratios may occur in the wake of comprehensive revaluation programs. Such programs often produce extreme and politically unacceptable increases in value. One common response is to simply scale down all values by as much 20 percent to 50 percent.

Conclusion While the components of the valuation ratio for a specific item of property will explain that particular valuation ratio, there remains the question of why valuation ratios vary so widely among and within categories of property in the same jurisdiction.

In the final analysis, the most troublesome violations of the principle of equality can be traced to variations in valuation standard ratios. And as a general rule, those taxpayers who enjoy the most favorable valuation standards ratios are the owners of properties which are few in number, have relatively high values, and for which complex valuation processes are required to establish fair market value. The owners of low and medium cost single-family residences are generally at a distinct disadvantage. The frequency of sales of such property provides readily accessible sets of data which can be used to compute valuation ratios and to adjust values accordingly. Further, the owners of non-residential property characteristically have more economic and political influence than the average homeowner.

The schemes used to obtain favorable valuation standards ratios and unjustified special adjustment are legion—and sometimes shocking. In all events, the secret to discovering the realities of local assessment administration is to rigorously pursue a line of questioning which asks, NOT WHAT **PERCENT**, BUT PERCENT OF **WHAT**?

Impact of Undervaluation (Craig Foster, March 1977)

Introduction From the passage of the Gilmer-Aiken Act in 1949 to the present, ad valorem property tax values have played a significant role in the distribution of state aid to local school districts in Texas. Throughout this period the presumed intent has been to equalize, at least partially, education resources by distributing proportionately more state aid to property poor districts than to property rich districts.

Through school year 1974–75, Texas operated under the Gilmer-Aiken Plan. County-assessed values were part of a multifactor economic index used in the distribution of state aid. Beginning with school year 1975–76, under HB 1126 (1975), Texas has used a single-factor economic index; the single factor for each district is the district's state-estimated full taxable value.

Because lower values have meant higher state aid, the Gilmer-Aiken Act and HB 1126 have encouraged competitive undervaluation. Under Gilmer-Aiken, the incentive was for each county to keep its assessed value as low as possible so that a greater share of total state aid would flow into its school districts. As one of the consequences, governmental services that might have been funded by counties have instead been provided by an inefficient proliferation of special function taxing jurisdictions. There was also an incentive for each district to keep its share of county-assessed value as low as possible relative to other districts in the county. This intra-county competitive undervaluation resulted in a lack of cooperation, and sometimes outright hostility between school district and county tax officials.

Under HB 1126, county-assessed values are no longer used, but there is an even stronger incentive for undervaluation among school districts. Each district can benefit by keeping its state-estimated full taxable value as low as possible relative to all other districts.

Throughout this entire period the state has depended heavily on self-reported valuation data, first from counties and most recently from school districts, tax appraisal firms and major taxpayers. The major benefactors have been the rich and super-rich school districts (measured in terms of property wealth per student). These districts and their major taxpayers have had, and continue to have, a distinct advantage over the poorer districts. In more or less direct proportion to their richness, the rich districts can have low valuation ratios, low assessment ratios, and low tax rates—and still have sufficient local tax revenues (1) to pay their local share of the foundation school program *and* (2) to substantially enrich the program. In other words, in the game of competitive undervaluation, the cards are decidedly stacked in favor of the rich and the super-rich school districts.

Property poor districts, it follows, are disadvantaged more or less in proportion to their relative poorness. They tend to have higher valuation ratios, higher assessment ratios, and higher tax rates. Yet, in spite of this higher tax effort, they do not have sufficient funds to enrich the foundation school program at anything near the levels enjoyed by richer districts. Nor do the poorer districts have anything like the capacity of the richer districts to play the undervaluation game.

The Transition By the close of the 1973 regular session of the legislature, there existed within the school finance community a virtually unanimous agreement that the Gilmer-Aiken Plan was no longer workable and that the best alternative would be an index based solely on full taxable value. Since that time, the state has conducted three studies of full taxable value in Texas school districts. The first was the 35 district pilot project of the Legislative Property Tax Committee (LPTC). It was the most thorough and statistically reliable study of taxable wealth in the state's history, yet it was never intended to do more than point the way for future studies of all school districts.

The second study was a short-term, low-budget effort performed by Management Services Associates (MSA), an Austin-based private consulting firm, under contract with the governor's office. The resulting compilation included all school districts but was, in essence, an arbitrarily modified version of school district self-reports. For reasons that should be obvious by now, no one places much faith in self-reported values, and most of the MSA modification did very little to compensate for relative degrees of undervaluation among the state's school districts.

The third study of taxable value in Texas school districts was recently completed by the Governor's Office of Education Resources (GOER) under provisions of HB 1126. The GOER study also included all Texas school districts, and while it is generally a more balanced study than MSA's, it has not produced value estimates of a quality that could be described as uniform, highly reliable, or fully defensible.

The MSA study provided the primary basis for state aid distribution in the 1975–76 and 1976–77 school years. The GOER study is designed to provide the value base for state aid distribution for at least the 1977–78 and 1978–79 school years. What future studies might be conducted has not yet been decided. The governor has proposed the creation of the School Tax Assessment Practices Board to conduct studies of taxable value, and GOER Director John Poerner has reportedly stated that his methodology could be perpetuated by the board for about $500,000 per biennium (the dangers of this alternative are reflected in the following sections). Rep. Wayne Peveto's Property Tax Study Committee has recommended state-conducted ratio studies that would also produce estimates of taxable value by school district. The price tag is higher, but so is the quality of the proposed product.

The GOER Study There seems little point in further discussion of the MSA study, since it will no longer be in use after the current school year. On the other hand, some further commentary on the GOER study is in order because there is a good chance that the legislature will adopt some version of GOER's values as the basis for state aid distribution in the coming biennium.

There are already signs that many members of the legislature are dissatisfied with the results of GOER's study. But in the end, the legislature will almost certainly have to concede that whatever their shortcomings, the GOER figures are the best data available. The only visible alternative is a set of raw, unverified school district self-reports. By analogy, you would have to concede that 40 percent is a better grade average than 30 percent. What must be remembered for future reference is that neither figure is anywhere near passing.

The most serious problems with GOER's study can be traced to the methodologies employed, particularly in the estimation of the value of high-priced commercial, industrial, mineral, utility, railroad and pipeline properties. In general, GOER's study of these categories of property was too heavily dependent on values self-reported by either the school districts, the companies involved or tax appraisal firms.

GOER's audit of commercial and industrial property, for example, was conducted in only 117 of the state's nearly 1,100 school districts. Even then, properties in excess of $10,000,000 value were excluded from the audit. Thus the state's major petrochemical, refining, and manufacturing installations were essentially untouched by GOER's study.

In one of its so-called independent studies, GOER openly invited utility, railroad, and pipeline companies to determine and submit their own taxable value. For its values on oil, gas, and other mineral properties, GOER relied on existing tax appraisals performed by valuation engineering firms, entities which are known to use short-cut methods that would not be acceptable in the actual marketing of such properties.

In short, much of the data from GOER's study appears highly questionable in light of the findings of the much more rigorous study conducted by the LPTC in its randomly selected 35 districts. For example, the LPTC study consistently found the *highest* valuation ratios for residential and locally owned commercial property and the *lowest* valuation ratios for rural land and industrial, utility, and mineral properties, especially at high value levels. The GOER study, on the other hand, makes it appear that just the opposite is generally the case. If the question comes down to whose data are more reliable, it should be noted that the LPTC, unlike GOER, conducted independent market value appraisals of industrial, utility, and mineral properties.

Future Prospects The major danger of perpetuating the methodology employed by GOER in its recent study is that major high-value properties would not be dealt with on a comprehensive and objective basis. The effect would be to penalize those districts which consist predominantly of residential and local commercial properties, and those districts which maintain relatively high valuation and assessment ratios (generally the property poor districts).

Major taxpayers, especially the owners of high-value industrial, mineral, utility, railroad, and pipeline properties, have played a significant role in competitive undervaluation. They have actively discouraged the use of bona fide market value appraisals of their properties. But until such properties are subjected to bona fide market value appraisals for local tax purposes, residential and local commercial taxpayers will continue to pay a disproportionately high amount of local property taxes. And so long as the state fails to estimate the value of such properties by including bona fide market value appraisals in its ratio studies, school districts with high proportions of residential and local commercial property will continue to receive less than their fair share of state aid.

Any effort to conduct reliable and fully defensible studies of taxable value can be expected to meet strong opposition. This is because undervaluation of property at the local level and underestimation of property values by the state will continue to pay substantial dividends to those major taxpayers and school districts who are most successful in the competition for understated values. Tens and hundreds of thousands of dollars, and sometimes even millions of dollars in local taxes and state aid are at stake.

These three major arguments can be anticipated from those who oppose the use of bona fide market value appraisals for high-value properties:

1. the cost is prohibitive;
2. favorable property tax treatment is required to attract and retain business and industry; and
3. appraisals are only *opinions* of value anyway.

Numerous studies in Texas and other states, as well as the personal experience of this author, provide ample evidence that the first two of these arguments are largely insupportable. The third is something less than a half-truth. Obviously the quality of opinions differ, and a fully informed, unbiased and well-documented opinion is good and sufficient evidence of value for any and all purposes.

The Peveto committee has billed its proposed property tax code as a "taxpayer's bill of rights." Perhaps what Texas needs even more is a "truth in valuation" act.

THE MSA MARKET VALUE ESTIMATES

Immediately after joining IDRA staff, Craig Foster initiated a study of market value estimates in a sampling of school districts surveyed for the governor's office by Management Service Associates (MSA). The market values determined by MSA were incorporated into state law (HB 1126) and were used for determining state aid to local districts. The first IDRA report was published in November 1975. It notes extensive discrepancies in the work of MSA, and extensive preferential treatment given to certain school districts. The following is the text of the report:

> The IDRA-PTP (Property Tax Project) office in Austin has completed its analysis of the state's market value estimates for selected school districts. The results of that analysis are presented in the summary of findings below.
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> The market value estimates under study by the IDRA-PTP office are those compiled by Management Service Associates (MSA), an Austin consulting firm, under contract with the governor's office. The MSA compilation was written into HB 1126 as the primary basis for determining state aid allocations for the 1975–76 and 1976–77 school years.
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> As reported in previous IDRA newsletters, the IDRA-PTP office has identified a number of apparent problems and discrepancies in the MSA compilation. Among the major findings to date are: (1) that approximately $10 billion in property value estimates are missing and unaccounted for in the final documentation submitted to the governor's office by MSA; (2) that many of the final figures reported by MSA cannot be derived from the methodology MSA claims to have used; and (3) that many districts appear to have received favorable treatment through informal negotiations with MSA and the governor's office.
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> *Random Study of Districts* The IDRA-PTP office is examining MSA's methodology and values for 100 districts, the 47 districts in the state's three largest metropolitan counties (Harris, Dallas and Bexar), the 35 districts included in a pilot project completed by the Legislative Property Tax Committee in February of this year, and numerous districts that have requested an IDRA analysis of their MSA values. The 10 districts included in the accompanying summary of findings were selected from these four groups to illustrate the types of problems and discrepancies which, on the basis of research efforts to date, may exist for as many as one-third of the state's 1,100 school districts.
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> IDRA's purpose in identifying and publicizing these apparent problems and discrepancies is to help generate evidence that will be useful to those school districts which may wish to appeal their values to the commissioner of education. Commissioner Brockette is authorized under HB 1126 to change MSA's values on the basis of economic or natural disaster and "apparent discrepancies."
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> *Discrepancies* "Apparent discrepancies" might be defined at least three ways: (1) deviations from true market value, (2) deviations from MSA's claimed methodology, and (3) deviations from MSA's treatment of favored districts.
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> In spite of the fact that true market value is essentially unknown and indeterminable from MSA's documentation, commissioner Brockette adopted the first of these three definitions as the only substantive basis for discrepancy appeals for the 1975–76 school year. The commissioner specifically precluded appeals based on methodology and interdistrict comparisons.
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> The second definition is the primary basis for the findings presented below, simply because the kinds of information currently available make this the most practical approach for a preliminary generalized analysis. However, for the purpose of future school district appeals, the third definition would be desirable because it tends to maximize interdistrict equity.
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> *MSA Methodology* Briefly stated, MSA's claimed methodology, as described in various MSA materials, consists of the following elements: (1) original school district self-reports, adjusted "in many instances" after consultation with local school officials, formed the basis of the compilation; (2) based on the presumption that local realty (residences and land) is traditionally undervalued by a minimum of 20 percent, MSA added 20 percent to self-reported local real estate values—no such adjustment was to be made for personal property or non-local realty (mineral, utility, industrial and commercial properties); (3) MSA computed the wholesale value of automobiles by county, added 35 percent to bring the value to retail level, prorated the county retail value to school districts on the basis of students in average daily attendance (ADA), and then adjusted self-reported automobile values to the retail-level proration; and (4) all districts were to be treated uniformly.

As reported in the October *IDRA Newsletter,* the IDRA-PTP office will analyze MSA's documentation on specific districts for school officials or citizens upon written request to IDRA Executive Director Dr. José A. Cárdenas. These analyses will include consideration of both the second and third definitions of apparent discrepancies. However, given the almost total absence of documentation for the favored treatment given some school districts by MSA and the governor's office, IDRA cannot fully identify the kinds of evidence which school districts might present in their attempts to obtain adjusted values. On the other hand, MSA's documentation does contain various hints as to the kinds of evidence they considered in dropping or reducing the 20 percent local realty add-on. Further, it would appear that every district whose value includes MSA's retail-level automobile proration has a reasonable basis for appealing to the commissioner of education for a reduction to at least the wholesale-level proration. The total statewide potential reduction in automobile values alone is on the order of $2 to $3 billion, including an as yet undetermined amount already granted by MSA and the governor's office.

There is little doubt that the correction of apparent discrepancies under the third definition would substantially increase the amount of state aid allocated to school districts during the current biennium. The Houston ISD, for example, could gain as much as $6.5 million in state aid if the district successfully appeals an interdistrict discrepancy identified by the IDRA-PTP office in response to an inquiry from IDRA board member Debbie Haley of Houston. (compare the treatment of Houston and Dallas in the summary of findings below)

Summary of Random Study This summary provides a brief description of specific apparent problems and discrepancies. The IDRA-PTP office had planned to present its findings in one or more data tables. However, the information contained in MSA's documentation and MSA's treatment of the data vary so widely from district to district that all efforts to tabulate findings have proven futile. The 10 districts included in alphabetical order here and their respective counties of jurisdiction are:

Atlanta ISD	Cass Co.
Bula ISD	Bailey Co.
Dallas ISD	Dallas Co.
Eastland ISD	Eastland Co.
Houston ISD	Harris Co.
Louise ISD	Wharton Co.
North East ISD	Bexar Co.
Priddy CSD	Mills Co.
San Antonio ISD	Bexar Co.
Wells ISD	Cherokee Co.

1. Dallas ISD: MSA initially gave Dallas the 20 percent local realty add-on and adjusted the district's self-reported automobile value to the retail proration. Both increases were later dropped, and Dallas's original self-report was accepted with these notations on the self-report form: "OK use full value base—per R.L. Hooker, Max K (sic) and HCH (Dr. Richard Hooker, head of the Governor's Office of Educational Research and Planning; Max Noller, Dallas assessor; and Harry Hastings, MSA project coordinator)," and "See revaluation program and appraisal cards." The accepted automobile value is 40 percent below the retail proration and 26 percent below the wholesale proration. The referenced revaluation program materials and appraisal cards are missing from MSA's documentation.
2. Houston ISD: Houston's self-report contained a lump sum figure for all real estate. There is no evidence that MSA attempted to obtain a breakout of local realty for purposes of calculating the 20 percent add-on, or that MSA ever calculated such an add-on. MSA did, however, give Houston the full retail automobile proration, in spite of the fact that Houston's self-report included a substantial, although not fully determinable, automobile value. Once again, there is no evidence that MSA sought sup-

plementary information necessary to make a proper adjustment. Missing documents are referenced in MSA notations on Houston's self-report: "See tax office test information, work notes, etc."

3. San Antonio ISD: San Antonio reported all real property in one lump sum, noting in a letter from Mago Garcia, City Tax Assessor to MSA, ". . . since we do not have property values segregated by classifications other than real and personal property, I did not make any attempt to try to break out industrial, commercial, utilities or banks." MSA's final value includes an add-on of 20 percent of the total real estate figure. There are no notations, references or supporting materials in the documentation. San Antonio, in effect, received an excess add-on of at least $100 million. In addition, San Antonio got the full retail automobile proration.
4. North East ISD: An MSA computer printout dated February 15, 1975, indicates that North East originally submitted a detailed self-report. The self-report is missing from the documentation. The application of MSA's claimed methodology would have produced a local realty add-on of $165 million and an automobile proration of $86 million, for a total adjustment of $251 million. However, MSA's final value is only $37 million above North East's original self-report. The MSA-generated self-report form on which it appears includes the notation, "Adjust to full value base/Lorillard and H.—OK RLH (Chester Lorrillard North East assessor-collector; Hastings and Hooker)." North East is the only Bexar County district which did not receive the full local realty add-on and the full retail automobile proration.
5. Bula ISD: Bula's self-report contained notations to the effect that local realty included some personal property and that the value listed in the blank for "automobiles" was wholly or partially for mobile homes. Apparently overlooking or ignoring these notations, MSA proceeded to calculate the 20 percent realty add-on and the automobile adjustment on the basis of the figures shown on the self-report. MSA's February computer printout includes the following notation for Bula: "Explanations on Analysis Sheet." The analysis sheet is missing, and there are no notations on Bula's self-report form.
6. Wells ISD: An MSA-generated self-report form for Wells, dated February 13, 1975, contains a lump sum total value figure only and the notation, "Negotiated this date by phone, HCH." A detailed self-report with the same total value was submitted by Wells on April 15. An MSA letter to the Wells superintendent, dated May 12, indicates that Wells received the standard local realty add-on and automobile adjustment. The letter goes on to say, "At this point it is important to understand that every school district—all 1,103—in the state were treated in the same manner." The letter also refers to a previous letter from the superintendent, and MSA's February computer printout includes the notation, "Explanations on Analysis Sheet." Both the letter and the analysis sheet are missing.
7. Atlanta ISD: Atlanta's self-report included a notation by the assessor that with the exception of automobiles, banks and financial institutions, which were reported separately, all local property was reported in a single lump sum. MSA increased Atlanta's self-report by an amount equal to the full automobile adjustment plus a 34 percent add-on to the lump sum figure for local property—including personalty as well as realty. There are no MSA notations on Atlanta's self-report form, and an analysis sheet referenced in the February computer printout is missing from the documentation.
8. Priddy CSD: Priddy submitted a detailed self-report totaling $13.7 million. The standard realty add-on and auto adjustment would have brought the total to $16.4 million. MSA's final value: $4.8 million. Notations, references, documentation: none. The

pilot project conducted by the Legislative Property Tax Committee estimated the full value of property taxed by the Priddy school district for 1973 to be $18.2 million.

9. Eastland ISD: MSA's calculation of Eastland's 20 percent local realty add-on reflects a combination of essentially all the add-on errors noted above. Eastland received a 20 percent add-on not only for local realty, but also for all industrial and commercial realty and personalty, and all local personalty, except automobiles—in spite of the fact that the assessor carefully noted on Eastland's self-report that all of the value for these various categories was reported as a single lump sum figure in the blank for "urban real estate." There are no MSA notations or references to documentation.
10. Louise ISD: Louise's self-report included a value for automobiles in excess of MSA's retail proration. MSA made no comment and no adjustment.

Missing Documentation Perhaps the most striking of the findings reflected in the foregoing summary are the lack of uniformity in MSA's treatment of the state's school districts and the missing documentation. There seems little remaining doubt that significant discrepancies exist for a substantial number of the state's school districts. This conclusion was confirmed, in part, by Raymon Bynum, chairman of commissioner Brockette's Market Value Review Panel, who said, according to a recent *Houston Chronicle* article, that discrepancies in MSA's figures were "very evident."

The same article contained the following: "'There was no variation in methodology,' said Mallas (president of Management Services Associates). 'To my best knowledge the 20 percent add-on was made uniformly . . . All of our records were turned over to the governor's office. I don't have any working papers.'"

The IDRA-PTP office recently learned that commissioner Brockette has at least $190,000 remaining of the $200,000 appropriated in HB 1126 for the purpose of correcting discrepancies in MSA's compilation. The fact that the legislature appropriated more funds for this purpose than were expended for MSA's initial study ($150,000) constitutes a clear expression of legislative intent that all reasonable efforts be made by the commissioner of education to produce a substantially improved set of market value estimates. And, while the commissioner has declared that he has made his determinations for the 1975–76 school year, there is no apparent legal barrier to his beginning immediately the process of correcting discrepancies and applying the results to both the 1975–76 and 1976–77 school years. State aid allocations are continuously recalculated throughout the school year on the basis of updated information. It seems both reasonable and desirable to IDRA that updated market value estimates be included in this process.

IDRA's criticism of the MSA study did not fall on deaf ears. Within a month after the release of Craig Foster's report, Speaker of the House Bill Clayton named a nine-member House committee to seek better methods of financing the local district share of the foundation school program, and to seek alternatives to real property valuation as a method of distributing state education funds.

The Texas Advisory Commission on Intergovernment Relations initiated its own study of property taxation and school finance. The commission scheduled a public hearing on property taxation for April 2, 1976, to include recommendations of the tax base, standards and methods for valuing property for taxation, and the appraisal and assessment process.

THE GOER MARKET VALUES

Gov. Dolph Briscoe established the Governor's Office of Educational Resources (GOER) under the direction of John Poerner to conduct a study of school district market values to be completed by January 11, 1977, for the opening of the 65th Legislature.

GOER Director John Poerner reported the following 12 activities for his group:

1. Self-reports from every school district detailing values and assessment procedures for each category of property;

2. Field reviews and reports by certified Texas assessors on every district for all types of land and for residential and agricultural improvements;
3. Appraisal reports by "independent fee appraisers" for every district for all types of land and for residential and agricultural improvements;
4. Special project on the uniform valuation of all Texas banks;
5. Special project on the valuation of farm and ranch personal property;
6. Special project on the valuation of utility property;
7. Special project on the valuation of oil, gas and other mineral property;
8. Field "audits" of commercial and industrial values by independent fee appraisers in 150 school districts;
9. Special project on the determination of productivity value of timber property;
10. Special project on the valuation of motor vehicles;
11. Special project on the determination of productivity value of agricultural land;
12. Preparation of a data base incorporating all of the pertinent information compiled in connection with 1–11 above.

The number of discrepancies in the MSA determination of district market values was so great that IDRA offered the services of its Property Tax Project to Texas school districts in the recomputation of market values and appealing the MSA values. Seventy-one school districts immediately requested this assistance, with three of the responding districts also requesting IDRA data and testimony for lawsuits. The following excerpts from a June 1976 article in the *IDRA Newsletter* describe this effort:[93]

> Thirty-eight Texas school districts who have recomputed their MSA values with the assistance of IDRA's Property Tax Project (PTP) may be entitled to additional state aid during the current biennium amounting to at least $662,000 and possibly as much as $1.8 million.
>
> The MSA values in question are those developed by Management Service Associates (MSA), a private Austin consulting firm, under contract with Gov. Briscoe. Their values were later incorporated in House Bill 1126 as the state's "Official Compilation," and are now being used by the Texas Education Agency as the primary factor in determining state aid allocations to school districts.
>
> IDRA-PTP research data indicate that approximately 300 of the state's 1100 school districts would qualify for additional aid under PTP's guidelines. The fact that only 38 of those districts have sought PTP assistance tends to confirm other indications apparent in conversations with various school officials—that many of the state's districts are concerned that attempts to challenge the state's official compilation might ultimately do them more harm than good in terms of their relations with the state, particularly the Texas Education Agency.

As GOER, under the direction of John Poerner, acquired more information on property taxation in Texas, increased irregularities were noted by IDRA staff. Requests for information from GOER files went unanswered despite the Texas Open Records Act, which guaranteed public access to GOER records. This lack of a response led IDRA to request a state attorney general's opinion on the issue of the computer files of GOER developed pursuant to HB 1126 being subject to public disclosure as per the IDRA request of July 2, 1976.

On September 1, 1976, Attorney General John Hill issued a decision ". . . that the information requested is subject to the Open Records Act, is not excepted from required public disclosure, and that it should be promptly produced for inspection, duplication, or both, as required by the Act."

When the decision was made public, GOER Director John Poerner immediately issued a press release indicating that GOER would comply with the attorney general's ruling. But three weeks later, when Craig Foster learned of the existence of a computer master file and requested a copy, Poerner refused, claiming that the attorney general's decision did not apply to such records. Dr. José A. Cárdenas immediately authorized a lawsuit which Craig Foster filed on September 23.

John Poerner and staff were placed under a temporary restraining order by a Travis County judge to prevent the alteration, mutilation, loss, removal or destruction of the computer records associated with the governor's study of taxable value in the state's school districts.

Much of the controversy on equitable taxation continued until the meeting of the 65th Legislature three months later. During the legislative session, 86 property tax bills and resolutions were introduced, bringing the issue of tax equity to a head in Texas. Of these bills and resolutions, 27 were passed and sent to Gov. Dolph Briscoe. Of the 27 new pieces of legislation, four were vetoed by the governor, and nine dealt with controversial technicalities, leaving 14 new laws dealing with tax reform, with three of them requiring voter approval as constitutional amendments.

The most important outcome of the reform effort was the enactment of SB 67, the Texas Assessors Registration and Professional Certification Act, which created the Board of Tax Assessor Examiners and gave the board broad powers to establish, administer and enforce a comprehensive program of registration and certification of assessing personnel. As a result of this legislation, public tax assessors and private assessors under contract with taxing units became subject to strict standards of conduct under the terms of the bill and regulations subsequently established by the board.

The rural lobby in the 65th Legislature achieved a large and long-lasting victory by the enactment of HB 22, which provided for open-space land used to support the raising of livestock or to produce farm crops or forest products, to be appraised at its productivity value rather than its market value. The application of this legislation led to a large decrease in rural taxation and, with the lower appraisal used, a significant increase in state school support.

In spite of the extensive property tax legislation in 1977, problems in the determination of local wealth persisted. Many school districts felt that they had been poorly served by the market values determined by the MSA study, and the results of the Governor's Office of Education Resources were not much better. In addition to the use of unreliable measures of market value, some school districts used illegal procedures to further lower district wealth reports and qualify for increased state aid. In an October 1977 article in the *IDRA Newsletter,* Craig Foster identified 107 school districts using illegal classified assessments, i.e., using different categories of property in the computation of market value. His findings correlated with the results of the 1975 study conducted by the Legislative Property Tax Committee, which found three generalizations in Texas assessment practices, ". . . as a rule, (1) high-value property is more undervalued than low-value property . . . ; (2) residential and small business property are the least undervalued, while rural and industrial property are the most undervalued; and (3) undervaluation is greater and varies more widely in small rural districts than in the usually larger urban districts."

The determination of local market values for tax purposes became an important byproduct of the school reform effort. The core of the reform effort was the amount of state assistance provided through the minimum foundation program (foundation school program) and subsequently in equalization aid. One cannot help but wish that abuses in the local determination of wealth arose with the reform effort. Unfortunately, that was not the case. The local abuses dated back to the creation of the Gilmer-Aiken program, but these abuses came to light during the reform movement when disparities became the topic of intense study. Many of the irregularities did not stem from attempts to obtain larger and unfair amounts of state aid. Some of the irregularities stemmed from preferential treatment given to large industries and businesses in the community, partly because of employment and other contributions made to the community, and partly because of the political influence of such entities. The additional state assistance provided because of depressed local tax values was just an additional windfall from the preferential treatment given to the powerful.

Many communities relied on the honesty of large industries in rendering their property for taxation. Local governments seldom had assessor personnel with the necessary training and experience to conduct sophisticated audits of industrial renditions. A fair market value assigned to a house could be easily verified by a comparison to the sales of similar houses in the community. The sale of oil refineries was not so common that it could be used as a yardstick in determining market value. In some cases, owners of industrial property actually hired tax experts who would provide local governments market values for taxation.

The emerging data of the school finance reform movement made abuses difficult to ignore. If state funding was to be distributed solely on the ability of school districts to support education, the measurement of this ability became a very sensitive issue.

In September,[94] October[95] and November 1977,[96] Craig Foster presented the following three-part article on measuring property tax capacity for public school finance:

Measuring Property Tax Capacity for Public School Finance (Craig Foster, September 1977)

The question of what indicator of property tax capacity should be used in the state's school finance system is one of several major school property tax issues dealt with in SB 1, Texas' new school finance law.

This article examines the question and the legislature's response, and suggests an alternative to the multiple indicators of property tax capacity provided for in SB 1. Future articles will describe these multiple indicators and discuss their immediate and long-range impacts on public school finance.

School district property tax capacity, sometimes referred to as "ability-to-pay," can be variously defined and determined. What types of property are included is the most important part of the definition.

A study of taxable value completed in December by the Governor's Office of Education Resources (GOER), included only those types of real and personal property which are presently being taxed by a substantial number of Texas school districts. Excluded from GOER's study were various types of tangible and intangible personal property which rarely, and in some cases never, appear on school district tax rolls, That exclusion seemed to displease the rural school districts and their legislators, who assert that the types of personal property not included in GOER's study are primarily located in non-rural school districts. On the other hand, GOER defined and valued agricultural lands in a way that minimized the taxable values reported for rural districts, That minimization seemed unfair to at least some of the non-rural school districts and their legislators. In short, both sides had cause to feel that the other's property tax capacity was being understated.

In response to these concerns, the legislature 1) amended state policy to provide *"that no class of property is unfairly treated"* in the determination of local fund assignment; 2) instructed the School Tax Assessment Practices Board (STAPB) to determine the value "of all property, *both real and personal*, and *both tangible and intangible*, in each school district"; and 3) instructed the Legislative Commission on Public School Finance to consider *"the pronounced diversity of monetary holdings and investments that exist throughout the state."*

SB 1 further provides that the GOER values will be used in the coming biennium, and the STAPB values thereafter, for three purposes: 1) assigning the local shares of the cost of the foundation school program, otherwise known as local fund assignments or LFAs; 2) allocating state funds for enrichment equalization; and 3) limiting local maintenance tax revenues.

Before commenting in a future article on the variable indicators of property tax capacity which the legislature devised for these purposes, it may serve well to discuss an indicator that might have been, and perhaps should eventually be selected as the single most appropriate indicator.

The ***Full Legal Tax Base*** of each school district equals the market value of all its taxable property, less the market value of mandatory veterans' exemptions, less the difference between the market value and the productivity or "ag use" value of constitutionally designated agricultural lands (lands qualifying for agricultural use valuation under Article 8, Section l-d of the Constitution).

The ***Full Practicable Tax Base*** of each school district differs from the full legal tax base in that it excludes the market value of certain types of tangible and intangible personal property which, in the judgment of most tax professionals, are not practicably taxable as part of the regular property tax base because of existing insurmountable legal and administrative obstacles. Stocks, bonds, money, household furnishings and personal belongings are examples of such property.

The following hypothetical example illustrates the legal and practicable tax bases:

Full Legal Tax Base
1. Market value of all *legally* taxable property ($100,000,000)
1.1 Less the market value of veterans' exemptions ($1,000,000)
1.2 Less the difference between the market value, $7,000,000, and the productivity value, $2,000,000, of constitutionally designated agricultural land ($5,000,000)
Full 1 Legal Tax Base = $94,000,000

Full Practicable Tax Base
1. Market value of all *practicably* taxable property ($80,000,000)
1.1 Same (−$1,000,000)
1.2 Same (−$5,000,000)
Full Practicable Tax Base = $74,000,000

In addition to the fact that it is virtually impossible for a school district to utilize its full legal tax base, it should be noted that a school district can, at its own option, utilize something even less than its full practicable tax base. There are both legal and illegal ways of doing so, and virtually all districts are involved to some extent. Nonetheless, under present circumstances the truest and most equalizing measure of a school district's property tax capacity is its full practicable tax base as defined and illustrated above.

Unfortunately, at least for those who believe that the truest and most equalizing measure of property tax capacity should be used in all school finance formulas, SB 1 not only provides for multiple and variable indicators of property tax capacity, but it also moves Texas away from, rather than toward, the use of the full practicable tax base.

It should also be noted that neither GOER nor STAPB values incorporate the constitutional version of the agricultural land deduction shown in the foregoing example. Both GOER and STAPB compilations substitute "all land generally available for agricultural use" in place of "constitutionally designated agricultural land." The result is almost always a larger deduction, which has the effect of understating the property tax capacity of districts with significant proportions of agricultural lands—the larger the proportion, the greater the understatement. This issue will be examined in greater depth in the sequel to this article.

Measuring Property Tax Capacity for Public School Finance (Craig Foster, October 1977)
SB 1, Texas' new school finance law, establishes multiple indicators of the property tax capacity of school districts to support public school education. Part I of this series, published in the September *Newsletter,* suggested a single alternative indicator that might have been, and perhaps eventually should be selected as the most appropriate indicator. The alternative suggested was the "full *practicable* tax base."

Part II describes and comments on the multiple indicators of property tax capacity which the legislature devised for allocating state funds to school districts and for limiting local maintenance tax revenues. None of SB 1's indicators matches the full practicable tax base. In fact, SB 1 moves Texas away from, rather than toward the use of the full practicable tax base.

Table 1 shows SB 1's multiple indicators of property tax capacity. With reference to the classification of districts shown in items 1 and 2 of the first column of Table 1, the following terms have been devised by IDRA to reflect distinctions made, in effect, by SB 1:

1.a. Rural Districts: ag use value is *less* than 87.8 percent of market value,
1.b. Non-rural Districts: ag use is *more* than 87.8 percent of market value,
2.a. Self-sufficient Districts: district wealth per student is 110 percent or more of statewide wealth per student,
2.b. Moderately Needy Districts: district wealth per student is at least 50 percent but less than 110 percent of statewide wealth per student, and
2.c. Very Needy Districts: district wealth per student is less than 50 percent of statewide wealth per student.

The terms underlined in Table 1 are shown in Illustrations A, B and C in a way that permits comparisons across time of the various value bases. The value bases for school years 1977–78 and 1978–79 are on the left; those for 1979–80 and thereafter are on the right.

"GOER" values are those reported to the legislature by the Governor's Office of Education Resources in February 1977. "STAPB" values are those which will be reported to the legislature by the School Tax Assessment Practices Board early in 1979.

TABLE 1 *INDICATORS OF PROPERTY TAX CAPACITY* (see text for explanation of terminology)

Factors Related to Property Tax Capacity	*School Years 1977–78 and 1978–79*	*School Year 1979–80 and thereafter*
1. Local Share of FSP (LFA)		
a. Rural Districts	.00205 × *GOER Ag Use Value*	.00205 × *STAPB Index Value*
b. Non-rural Districts	.0018 × *GOER Market Value*	.0018 × *STAPB Market Value*
c. Any District (optional)	1.25 × Prior Year's LFA	1.25 × Prior Year's LFA
2. Enrichment Equalization Aid		
a. Self-sufficient Districts	No Aid: Optional Enrichment from Property Tax Only	Same
b. Moderately Needy Districts	$185 per ADA based on District and State Averages of *GOER Ag Use Value* and *GOER Market Value,* plus Optional Enrichment from Property Tax	$185 per ADA based on District and State Averages of STAPB Ag Use Value and STAPB *Market Value,* plus Optional Enrichment from Property Tax
c. Very Needy Districts	$210 per ADA based on District and State Averages of *GOER Ag Use Value* and *GOER Market Value,* plus Optional Enrichment from Property Tax	$210 per ADA based on District and State Averages of *STAPB Ag Use Value* and *STAPB Market Value,* plus Optional Enrichment from Property Tax
3. Total State Aid per ADA under the foundation school program —Any District (Optional)	At least 100% of amount received for School Year 1976–77	Same
4. Maximum Maintenance Tax Revenue—All Districts	0140 × *GOER Market Value*	.0140 × *STAPB Market Value*

ILLUSTRATION A

GOER Ag Use Value	*STAPB Index Value*
1. Market value of most *practicably* taxable property	1. Market value of all *legally* taxable property
1.1 Less the market value of *some* veterans' exemptions	1.1 Less the market value of veterans' exemptions
1.2 Less the difference between market value and productivity value of all land generally available for agricultural use	1.2 Same

ILLUSTRATION B

GOER Market Value	*STAPB Market Value*
1. Market value of most *practicably* taxable property	1. Market value of all *legally* taxable property
1.1 Less the market value of *some* veterans' exemptions	1.1 Less *no* deduction for veterans' exemptions

ILLUSTRATION C

GOER Ag Use Value	*STAPB Ag Use Value*
1. Market value of most *practicably* taxable property	1. Market value of all *legally* taxable property
1.1 Less the market value of *some* veterans' exemptions	1.1 Less *no* deduction for veterans' exemptions
1.2 Less the difference between market value and productivity value of all land generally available for agricultural use	1.2 Same

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There are, incidentally, further potential differences between GOER and STAPB values. GOER market values are almost certainly understated because GOER, in a majority of instances, accepted school district self-reports for such major categories of property as oil, gas and other minerals, and utilities. STAPB *may* do a better job by actually conducting independent bona fide appraisals of a sample of such properties. Too, GOER's methodology minimized both the market and productivity values of agricultural land. Once again, STAPB *may* use a more objective methodology.

Note in Table 1 and Illustrations A, B and C that in most instances SB 1 provides different indicators of property tax capacity for each of the factors related to property tax capacity, both within and between the two periods.

Viewed vertically (within each period), the differences shown in Table 1 reflect a remarkable variety of formulations. For local share, where the lowest possible amount is the most desirable, SB 1 offers each district a choice between the two value bases and then adds a save-harmless clause. For enrichment equalization, the two value bases are averaged. For total state aid per ADA, SB 1 provides a save-harmless clause that can override the combined effects of the local share and enrichment equalization formulations. And finally, for maximum maintenance tax revenues, SB 1 specifies a single value base for all districts.

Viewed horizontally (across time), the differences lie primarily in the use of different value bases, and the nature of the differences is evident in Illustrations A, B and C. The biggest difference, of course, is between the use of "most *practicably* taxable property" for 1977–78 and 1978–79, and "all *legally* taxable property" for 1979–80 and thereafter.

The nature of the difference revealed in Table 1 raises the question as to whether and to what extent the use of different indicators of property tax capacity represents a rational approach to public school finance. Obviously, not all of the differences are totally irrational, although even some which have a rational appearance may be somewhat arbitrary in fact. The classification of districts for enrichment equalization aid is an example. Too, it is not necessarily irrational to use different value bases for different time periods, provided the revised value bases more accurately reflect true property tax capacity. But, as indicated in Part I of this series, quite the opposite occurs under SB 1.

On the other hand, some of the differences seem inherently irrational. The following are among the many questions that might be asked: (1) If the distinction between rural and non-rural districts is legitimate in determining local share, why not use a similar distinction in determining maintenance tax revenue limits? (2) If it is legitimate to use *either* ag use value or market value in determining local share, why use the *average* of ag use and market values in determining enrichment equalization aid (or vice versa)? (3) If STAPB *index* value is to be substituted for GOER ag use value in determining local share, why substitute STAPB *ag use* value for GOER ag use value in determining enrichment equalization aid? (4) Do the save harmless clauses at l.c and 3. in Table 1 have any rational relationship to true property tax capacity?

SB 1 has been widely publicized for its "two-tiered" approach to public school finance. At first the term was used to describe the method for determining local share. Later it seemed also to include the method for allocating enrichment equalization aid.

SB 1 might better be recognized for its *ten*-tier approach. A closer examination of Table 1 reveals that SB 1, in effect, distinguishes a possible total of 10 groups of school districts. There are in fact three, not two tiers for both local share and enrichment equalization aid. The number of possible combinations of the three local share tiers with the three enrichment equalization tiers totals nine, and the save-harmless tier covering total state aid per student brings the grand total to 10 tiers. Make that 20 tiers if you want to consider the fact that the districts will be reshuffled into as many as 10 different groups when the new indicators of property tax capacity take effect in 1979–80.

Two larger questions now emerge. Are the multiple indicators of property tax capacity in SB 1 deliberate, arbitrary contrivances designed to produce favorable treatment for selected districts, or classes of districts? If so, who got how much of what and from whom? The final article in this series will deal with these questions.

Measuring Property Tax Capacity for Public School Finance (Craig Foster, November 1977) Part II of this series, published in the October IDRA *Newsletter*, described the multiple indicators of property tax capacity in SB 1 and raised the question as to whether these indicators are deliberate, arbitrary contrivances designed to produce favorable treatment for selected districts, or classes of districts.

The finance provisions of SB 1 evolved through complex legislative negotiations, so there probably is no simple, clear-cut answer to our question. Nonetheless, the nature of the negotiations and the outcome suggest that the dominant forces in state government and the education community may be more concerned with purely political and economic factors, than with the quality and equality of educational programs and the equalization of school property tax burdens.

Notwithstanding the lofty language of the Texas Constitution and of the state policy set forth in the Texas Education Code, the real interest of most of the state's school districts appears to be focused on the question of how a particular piece of legislation will affect the amounts of state aid they will receive (especially when compared with the prior year's amounts). The legislative and executive branches of state government have responded accordingly. The state simply came up with a solution that most, or at least the most influential districts, could "live with" for at least two years. Perhaps this is all that can be expected at this point in time. Texas schoolchildren and taxpayers may fare no better until the courts, state or federal, have intervened in their behalf.

For now, in short, it comes down to the basic question of the relative benefits of the distribution of state funds under SB 1: Who gets how much of what and at whose expense in the coming biennium and beyond?

First, so long as the agricultural productivity values used in state aid distribution formulas are for those lands "generally available for agricultural use," rather than those lands "constitutionally designated for agricultural use," the property tax capacity of rural land will continue to be *under*stated. Rural land will, therefore, generate more than a fair share of state aid. Under SB 1 this favored treatment of rural land will begin in school year 1977–78 and carry forward indefinitely.

Second, as soon as the STAPB (School Tax Assessment Practices Board) values are used in state aid distribution formulas, the inclusion of practicably *un*taxable personal property will, in effect, produce an *over*statement of capacity. And if, as is widely assumed, such property is predominately located in urban districts, it is those districts whose property tax capacity will be most overstated. This means that the advantage already enjoyed by rural districts will be increased beginning in school year 1979–80.

Those (presumably urban) districts whose STAPB values will be substantially inflated by the addition of practicably untaxable personal property will find themselves in a peculiar bind. Under SB 1 they will have to raise a larger share of their total revenue from local property taxes. But since they will not be able to effectively tax all the property included in the STAPB values, they will have to load the additional burden on those taxpayers whose property is already on the tax rolls.

As to the impact of SB 1's save-harmless clauses, the legislature has again, as in HB 1126 (1975), taken care to cushion the shock for those districts which are so situated, usually by virtue of great wealth, that large property tax increases would otherwise be required. Ironically, these save-harmless clauses may become valuable to those urban districts which are not now counted among the rich, but may be when the STAPB values take effect.

Little needs to be said at this point about the maintenance tax revenue limit provided for in SB 1. The word around Austin is that no district in the state has yet come seriously close to the specified maintenance revenue limit. While the SB 1 limit may eventually affect some districts, there is apparently time enough to make whatever statutory revisions may be deemed appropriate. For the time being, the purpose of the limit appears to be entirely political. After all, Gov. Briscoe did promise in November 1976 that he would not sign a school finance bill that did not include a cap on local property taxes.

Looking forward to 1979, it seems reasonably safe to say that the sections of SB 1 dealt with within this series will be rewritten to some extent by the 66th Legislature.

For one thing, it is very doubtful that STAPB's mandate to determine the value of all tangible and intangible property can be met with any substantial degree of accuracy. If the wherewithal to discover and appraise such property were available, many financially hard pressed school districts would already be taxing at least some of it. But if the legislature elects to use the STAPB figures, notwithstanding the unavoidable inaccuracies, surely the adversely affected urban districts will press for new formulas for the computation of local fund assignments and enrichment equalization aid. For example, the legislature could close the gap between urban and rural districts by increasing the relative difference between the local fund assignment index rates (now .0018 on market value and .00205 on ag use value).

An alternative basis for compromise between rural and urban interests may be the second set of agricultural land values (not previously mentioned herein) which STAPB is required to develop. After mandating that STAPB *determine* the productivity value of all open-space land generally *available* for agricultural use, SB 1 tacks on an apparently incidental requirement that STAPB estimate the productivity value of all open-space land *exclusively devoted to* or *developed for* agricultural use. The quantity, and therefore the total value of the latter would be considerably less. It is conceivable that the legislature would elect to use these values in order to help offset the current advantage enjoyed by the rural districts in the computation of local fund assignments and enrichment equalization aid.

Meanwhile, back at the ranch . . .

CHALLENGING MARKET VALUES

During 1977, IDRA published a manual written by Craig Foster, *A Citizen's Guidebook to Property Tax Valuation Audits.*[97] The purpose of this publication was to assist state legislators, school board members, educators, community action groups and community leaders in conducting audits of property tax valuations. In January 1978, the Property Tax Project began the distribution of the manual and provided extensive technical assistance for conducting the audits. IDRA dissemination efforts stressed the absence of well-organized and well-informed citizen protest in property assessment procedures. Craig Foster speculated that the reason for citizens' reluctance to question assessment procedures was that residential and small-business property owners had vague notions that they were receiving a break through the undervaluation of their property. Some undervaluation is desirable and necessary since it is much safer to err on the conservative side of valuations, lest an overvaluation be successfully challenged, leading to a court injunction against the entire tax rolls of a taxing entity. But these undervaluations were insignificant when compared to the massive undervaluations being given for large business and industrial properties.

In spite of the low tax effort which characterized Texas, California tax opponent Howard Jarvis convinced Gov. Dolph Briscoe of an imminent taxpayers' revolt in this state. Briscoe promptly called two special sessions to deal with property taxation. The first session was followed by a second session to correct the mistakes of the first session. The agenda and product of the these sessions is described in Chapter 4.

During this period of property tax reform in Texas, Craig Foster may have been the busiest person in the state. As head of the IDRA Property Tax Project, he presented expert testimony to the House Ways and Means Committee (at the request of Rep. Wayne Peveto), and to the House Committee on Constitutional Amendments (at the request of Rep. Luther Jones). Foster attended several dozen committee hearings and floor debates on tax relief and reform. He provided technical assistance services to Rep. Matt Garcia and Rep. Ben Reyes, co-chairmen of the House Mexican American Caucus; to Rep. John Bryant, chairman of the House Study Group; Luther Jones of the House Committee on Constitutional Amendments; Wayne Peveto, chairman of the Legislative Council's Property Tax Study Committee; Ron Coleman of the House Committee on Public Education; and Reps. Arnold Gonzales and Hector Uribe from South Texas.

During the 1978 special sessions, Craig networked with Ralph Nader's Tax Reform Research Group, various school district superintendents and boards, and citizen advocacy organizations, including Texas ACORN, New Orleans ACORN, Common Cause of Texas, Texas Legal Services Center and the Texas League of Women Voters.

If the products of the 1978 special sessions, HJR 1, HB 57 and HB 18, failed to provide meaningful property tax reform, it was certainly not because of lack of IDRA planning and participation.

In the movement toward resource equity, direction and progress were consistently derailed by the strong push for increased general funding. In the movement toward property tax equity, direction and progress were similarly derailed by the push for property tax relief. As a result, neither resource equity nor general funding were adequately addressed, and neither property tax equity nor property tax relief was adequately addressed. The ink on the special session legislation of 1978 was not even dry before the 66th Legislature convened in January 1979, with school finance again being the principal item on the agenda, along with the reforming of the special session legislation enacted only a few months before. Albert Cortez reports in anticipation of the 66th Legislature, "The definition of local ability to pay will be a central part of this [the legislative] debate."

While the 66th Legislature was in session, IDRA continued to provide technical assistance to low wealth school districts wishing to appeal market values used to determine state educational assistance. The unreliable MSA values had been replaced by equally unreliable values established by the Governor's Office of Education Resources (GOER). These values in turn had been replaced after two years by new values determined by the state School Tax Assessment Practices Board (STAPB), established by the 65th Legislature during its first called session. Although the new values were much more valid than prior estimates, homeowners, small businesses, urban areas and low wealth school districts were still penalized in the calculation of market values. IDRA's Property Tax Project continued to provide free technical assistance to school districts penalized under the state valuation system. In appeals on behalf of the Edgewood, Brownsville, San Elizario, Edinburg, Mission, La Joya, Eagle Pass, Robstown and West Oso school districts, more than $1 million in state aid for education was recovered.

The impact of the 66th Legislature on property tax equity was relatively minor. SB 350 did amend prior law to provide that the STAPB conduct its biennial study of school district property values to provide more valid measurement of a district's capacity to support education. STAPB was also given responsibility for conducting a study of productivity value of open-space, agricultural and timber land.

PROPERTY TAX RELIEF

By 1980 the Texas Legislature had made many efforts to address the question of property tax relief. Unfortunately, as the various sessions of the legislature groped with an extensive number of interests as represented by an extensive number of legislative proposals, and an even more extensive number of amendments submitted in committees and on the floor, property tax relief was not uniformly provided. Each piece of enacted legislation provided increased relief to high wealth taxpayers and, as a result, to high wealth school districts.

During this year, IDRA published a series of five articles by Craig Foster which recapitulated property tax reform, inequities in the amount of tax relief provided, and the direction needed in future reform. The series of five articles which provides extensive insight into the reform effort are presented below:

> **Texas Property Tax Relief: An Old Shell Game With Some New Moves, Chapter 1, by Craig Foster.**[98]
>
> *Chapter One: How Do You Spell Relief?*
>
> Texas property tax relief did not begin with the voter's approval in November 1978 of HJR 1, the so-called Tax Relief Amendment. Indeed, some forms of relief are as old as the property tax itself.
>
> Some types of relief are legal; others, clearly illegal; still others, probably illegal (the latter including those which are authorized or mandated by laws that would probably be declared unconstitutional at some level of judicial review). Some laws which bear the tax relief label actually provide no relief. Others that are not so labeled actually provide very substantial relief.
>
> Relief has only one definition but is spelled in many ways. That definition, simply stated, is: taxation in any given year on any basis other than full market value or a uniform percentage thereof. The following list of spellings, with an example for each, is comprehensive in a general sense, but does not cover every specific variant and exception.

1. *Federal Immunity* (the only form of relief that is not subject to the laws of the state): Federally-owned military bases are immune from state and local property taxation.
2. *Total Exemption* Summer camps owned and used exclusively by the Boy Scouts of America are totally exempt from state and local property taxation.
3. *Partial Exemption* The first $5,000 of the market value of every residence homestead is exempt from school district property taxation; the next $10,000 of the residence homestead of a person 65 or older is likewise exempt. (Note that while these are called partial exemptions, they may function as total exemptions. If, for example, the residence homestead of an elderly person is valued at $15,000 or less, it is totally exempt from school taxes.)
4. *Tax Freeze* The maximum amount of school taxes that can be imposed on the residence homestead of a person 65 or older is frozen at the amount imposed in the first year the person qualifies for the $10,000 exemption cited at 3, above; if certain kinds of improvements (a swimming pool, for example) are added later, taxes will increase, but will be similarly frozen after the first year.
5. *Deferred Payment* A person 65 or older may defer payment of any or all property taxes imposed on his/her residence homestead. (The deterred taxes become due and payable only when the property ceases to be his/her residence homestead.)
6. *Productivity Valuation* (also "use valuation" and "valuation in current use") Most farm, ranch and timber-producing land is subject to property taxation on the basis of its productivity value, which is usually less (but never more) than its market value. (With this type of relief, there is also an element of deferred payment, which is discussed in a later chapter.)
7. *Cancellation* Delinquent taxes on real property are effectively canceled after a certain period of time (under current law, if the year of delinquency is prior to 1939).
8. *Omission* (also "escaped property") The value of a home that is left off the tax roll in any given year cannot be taxed retroactively, provided the land on which it stands was taxed that year.
9. *Special Interest Valuation Statutes* The statutory formula for computing the taxable value of the intangible assets of certain insurance companies produces an amount less than zero, effectively exempting those assets from property taxation.
10. *Unequal Undervaluation* The effective tax rate on an oil refinery appraised for tax purposes at 40 percent of its market value is only one-half the effective rate on a home in the same tax unit appraised at 80 percent of its market value.
11. *Negligible Assessment Ratio* When the state assessment ratio (percent of market value subject to taxation) is reduced to .0001 percent, effective January 1980 all property will be effectively exempted from the state property tax. (A market value of $10,000,000 will yield only one penny in taxes.)
12. *Sweetheart Deals* A petrochemical manufacturer who wants to build a plant within a city's boundaries agrees to pay the city a nominal amount, ostensibly for certain municipal services, but actually in exchange for an agreement that the city will deannex the company's plan site and not reannex it for a specified number of years.

The Tax Relief Amendment and its implementing legislation, the Tax Relief Bill (HB 1060 of the recent regular session of the legislature), contribute only one new spelling but add several variants of old spellings. Some of their provisions have the effect of simply legalizing previously illegal tax relief. In other words, they change the law to be practiced without granting any new relief. Chapter Two, *When Relief Spells Nothing New,* deals with those provisions of the amendment and the bill.

Other legislation enacted in 1979 grants relief indirectly, or in the name of some other public purpose. Chapter Three, *Relief by Any Other Name Would Smell as Sweet,* examines the legislative rationale and the results, including the world's largest residence homestead exemption, three billion dollars—that's right, $3,000,000,000 per homestead.

Chapter Two: When Relief Spells Nothing New[99]

Have you ever paid a penny of property taxes on your checking account, the cash in your pocket, or your stock in General Motors?

How about your furniture, your wardrobe, your paintings and your jewelry. Have these ever been included in the tax bill from your local assessor?

Do you pay property taxes on the stock you own in the local bank, while your neighbors pay no tax on the stock they own in the local savings and loan company?

Are you required to pay property taxes on your personal automobile while your friends in the neighboring school district pay nothing on their cars?

Are you one of those thousands of farmers and ranchers whose land is taxed on the basis of a so-called market value of $2, $10, or $50 dollars an acre—when its actual market value is somewhere between $500 and $2,000 an acre, and its actual productivity value, the new *legal* basis of taxation, is between $100 and $400 an acre?

If you answered No, No, Yes, Yes, and Yes, the Tax Relief Amendment of 1978 and the Tax Relief Bill of 1979 spell nothing really new for you or for your favorably treated neighbors and friends. And that is, of course, a mixed bag of good and bad news. For example, those of you who pay taxes on bank stock or personal cars and trucks might well feel that it should be an everybody-or-nobody situation. Those of you farmers and ranchers who pay taxes on the basis of actual productivity value might well object to the fact that many of your competitors continue to enjoy much larger and technically *illegal* tax breaks.

If relief spells nothing new in these instances, how do they fit into the 1978–79 tax relief package?

The long and short of it is that parts of the new tax relief law do nothing more than legalize widespread, but clearly illegal practices of the past. Other common illegal practices are perpetuated by legislative inaction. Some old tax relief laws remain on the books, even though they are clearly inequitable and constitutionally questionable—and could have been repealed or amended under authority granted by the Tax Relief Amendment.

Intangibles and Household Property

The first three of our opening questions deal with kinds of property that the amendment and bill refer to as "intangible property" (cash and bank, stock for example), and "household goods and personal effects not held or used for the production of income." For brevity we will call them "intangibles" and "household property."

Prior to the new tax relief law, all intangibles were legally taxable, as were all items of household property, except for $250 worth of a family's "household and kitchen furniture."

In practice, bank stocks were the only regularly taxed intangibles that produced significant amounts of local tax revenue. Certain other financial institutions and insurance companies paid little or no taxes on their intangibles—thanks to phony formulas contained in special valuation statutes. (the subject of a future chapter entitled, *What If They All Died at Once?*)

Here and there a few conscientious taxpayers naively reported their intangibles to the assessor. Some were taxed, others ignored. Finally, some types of household property (high-priced paintings, for example) were actively taxed, but only by a handful of local governments and never on a comprehensive basis.

In short, when it came to intangibles (except bank stock) and household property, the vast majority of local assessors just looked the other way and, if asked in court whether they taxed such property, could generally avoid legal difficulties by replying "Yes, to the best of my ability to do so." And, to further cover their tracks, some assessors actually taxed their own wrist watches and checking account balances.

Under the new law, the special statutes covering bank stock and the intangibles of other financial institutions and insurance companies are left untouched. In short, it is business as usual—no new relief, no disruption of old relief. All other intangibles (with an exception that is of no relevance here) and all items of household property are exempt. Past practice is simply legalized. Furthermore, because there never has been any meaningful threat of taxation of such property, those exemptions do not even merit a sigh of relief.

The exemption of intangibles does, however, have relevance in the context of the ongoing fight between urban and rural factions over the distribution of state funds for public school education. That issue is discussed in the conclusion of this chapter.

Personal Automobiles

Virtually all motor vehicles were legally taxable under prior law. That included all personal automobiles, defined in the Tax Relief Bill as "passenger cars and light trucks that (a) family or individual owns and does not hold or use for the production of income."

In practice, many school districts and a few other local tax units (no exact count is available) did tax personal automobiles on a more or less systematic and comprehensive basis. But the majority of tax units made little or no attempt to do so. Once again, the assessor's "To the best of my ability to do so," combined with the inclusion of the assessor's family car on the tax roll, provided a generally adequate defense.

The Tax Relief Bill exempts all personal automobiles, but (and this is a very big but) also permits local tax units to override the exemption. Here, as before, existing practice is transformed into law, and no new tax relief is granted—although, admittedly, it is not as simple a matter here as it is in the case of intangibles and household property.

On the whole, it is anticipated that most of the tax units that have effectively taxed personal automobiles will do so in the future; most of those that have not, will not. The reason is simple. Tax economics, not tax legalities, have been and will continue to be the principal determinants of whether personal automobiles are taxed.

Tax units with heavy revenue demands and little high-value industrial or mineral property in their tax bases will continue to be the most likely to tax personal automobiles. The game will be played under new rules, but the results probably will not be significantly different.

Faced with political pressures to overlook personal automobiles, the local assessor and members of the governing body could argue, before 1979, that they were only doing what the law required. They no longer have that crutch. Local governing bodies that wish to *continue* such taxation must now openly and affirmatively override the exemption. Predictably, some have been and others will be persuaded not to take that action. Further, it will surely be more difficult to *initiate* the taxation of personal automobiles under the new rules, except in the face of extraordinary revenue demands.

Ironically, the automobile exemption, in conjunction with the provisions of the Tax Relief Bill dealing with the state reimbursements to school districts for certain tax relief revenue losses, offers the least relief where relief is most needed, and puts the officials and taxpayers of property poor districts in a peculiar double bind. More on this will be in the conclusion.

Chapter Two: When Relief Spells Nothing New (Conclusion)[100]

Farm and Ranch Land

For as long as anyone can remember, millions of acres of Texas farm and ranch land have been taxed by local governments at so-called market values no closer to actual market values than the population of Sweetwater is to that of Houston. Under the kind of relief game defined in Chapter One as "unequal undervaluation," the farmers and ranchers (especially ranchers) who own those lands are clearly the big winners. Assuming that at least some of them are persons of good conscience, it must be somewhat embarrassing. Perhaps that explains why they seldom discuss their good fortune in public places.

The number of landowners in this most favored class began to dwindle some 20 to 30 years ago. The demand for more and more local tax revenue spread into rural areas, following the spread of large cities and of higher aspirations for public services. One after another, local governments (mostly school districts) began reappraising farm and ranch land for tax purposes. In many cases it was not really *re*appraised but *first-ever* appraised.

It would be a gross misrepresentation to suggest that any but a few of these appraisal programs produced anything close to genuine market values. There is an unwritten rule in the tax relief shell game that no matter how far the old values are from the legally taxable values, the assessor is supposed to bring them up a little at a time, say, over a five-year period. The rule is occasionally broken, usually under extraordinary circumstances—for example, when either the majority of the members of the school board have already decided that they have served long enough, or the assessor has already decided to seek employment elsewhere, or both.

Notwithstanding the usually slow pace of appraisal catch-up, a growing number of farmers and ranchers began to feel the pinch. Therein lay the genesis of productivity valuation in Texas. In 1966, the voters were persuaded to adopt a constitutional amendment, now Section 1-d of Article VIII, entitled "Assessment of Lands Designated for Agricultural Use." Productivity value replaced market value as the legal tax base for certain farm and ranch lands. Section 1-d is the "family farmer" amendment. Corporate landowners had tried but failed to get aboard.

We pause at this point to assure you that nothing herein is intended to imply (and it would be a mistake for you to infer) *any* position with respect to the much broader question of whether farmers and ranchers, family or corporate, should be granted preferential treatment. Our sole concern is with the duplicity and inequalities that characterize the system as it has evolved in Texas.

Some of those whose land qualified for productivity valuation under Section l-d breathed a sigh of relief; others could not have cared less. The latter already had a better deal and knew it. Ironically, some of those who thought they were getting relief found out the hard way that they too already had a better deal. They are the ones who applied for productivity valuation, only to learn later that the new values would be higher than the old. Some were permitted to withdraw their applications the first year; presumably all had the good sense not to apply the next year.

The key, you see, is to *not* apply. To get productivity valuation, you must apply for it. The assessor is not otherwise required or even authorized under Section 1-d to appraise your land at its productivity value. So, if your land's so-called market value is less than its productivity value, let it slide.

In terms of generally accepted valuation theory, if a piece of land has no discernible use other than the production of agricultural products, its market value will be essentially the same as its productivity value, but cannot be less in any meaningful sense. Further, there is no conceptual or procedural definition of market value in Texas law that would permit any deviation from the generally accepted appraisal theory in determining the market value of farm and ranch land.

Now comes the Tax Relief Amendment in which the legislature is authorized to, and did extend productivity valuation to virtually all farm and ranches land—including, if you can believe this, land used for growing ornamental flowers. The authority is found in Section 1-d-1 of Article VIII of the Constitution. The legislature's response is in HB 1060 the Tax Relief Bill.

The legislature, or at least the leadership and those members with any sense of what had occurred under Section l-d, knew about the application loophole. They had the opportunity to close it, or at least try. They did neither.

It's not that the requirements for application are bad, per se. Indeed as is the case with most other forms of preferential treatment, the assessor needs the supporting information in the application in order to determine whether the property and/or the owner actually meet the legal qualifications. In short the application loophole, not the application itself, is the problem.

As is so often the case, what the leadership induced the legislature to adopt is a combination of good news and bad news. The good news is that the Tax Relief Bill mandates that local assessors use uniform, state-prescribed appraisal procedures for determining the productivity value of qualified land. That is clearly an essential element of an equitable productivity valuation system. And while the procedures specified in the bill are likely to produce productivity values somewhat below actual values, they are surprisingly in tune with professional appraisal standards.

The bad news is that the legislature did not also mandate the use of similarly rigorous procedures for determining the market value of all open-space land. Had they done so, the loophole would be closed. Given the choice between the two resulting values virtually every farmer and rancher whose land qualified for productivity valuation would apply. The better deal which now induces non-application would no longer be available.

Please note that it would not have been enough to mandate bona fide market value appraisals just for those lands whose owners apply for productivity valuation. Presumably they apply because their locally determined market values are already higher than their productivity values. The only way to provide an incentive for *all* owners of qualified open-space land to apply is to subject *all* open-space land to bona fide market value appraisals. (A secondary benefit is that the owners of *non*-qualified open-space land, many of whom enjoy illegal tax breaks of approximately the same magnitude as the most favored farmers and ranchers, would be given the opportunity to start paying their fair share of the tax burden.)

But, as someone will surely hasten to point out, "there shall be no statewide appraisal of real property for ad valorem tax purposes." (That provision of the Constitution is another goodie you bought, perhaps unknowingly, when you voted for "tax relief" in November 1978.) Therefore, the argument (or excuse) continues, the legislature *could not have* mandated the statewide use of state-prescribed procedures for determining *the market value of all open-space land.*

Balderdash! The legislature *has* mandated the statewide use of state-prescribed procedures for determining *the productivity value of all qualified open-space land.* Now try to convince us that there's a nickel's worth of difference in the above quoted constitutional prohibition. In the meantime we will maintain the position that the legislature had (and has) as much authority to prescribe market value appraisal procedures as they exercised in prescribing productivity value appraisal procedures.

If you still have any doubt as to the leadership's intent regarding the application loophole, there is one further item of bad news from the Tax Relief Bill that you might want to consider before passing judgement. Recall the poor souls who discovered how lucky they *had* been only after they unwittingly applied for productivity valuation. Well, the legislature, in what is at best a clumsy gesture of fair play, has provided a neat solution. This is one bit we would not expect you to accept on faith, so we quote it below:

"The tax assessor for each taxing unit shall determine the [Section 1-d-1] value . . . of each category of open-space land and, when requested by a landowner, the [Section 1-d] value . . . of each category of land owned by that landowner and shall make each [productivity] value and the market value of the owner's land according to the preceding year's tax roll available to a person seeking to apply for [productivity valuation]. . . ."

In short, the farmers and ranchers now have an almost foolproof means of selecting their best deal. Almost, but not quite foolproof because the legislature left out one crucial requirement: that the assessor advise the prospective applicant as to the possibility of any increase in the market value of his land for the *current* tax year. Assume, for example, that (1) the market value "according to the preceding year's tax roll" is lower than either the 1-d or the 1-d-1 productivity value made available by the assessor, and (2) a market value reappraisal program is in progress. If the prospective applicant is not made aware of the reappraisal program and its potential impact on his value, he will surely decide to *not* apply. Here's the bind. Typically, the reappraisal period extends well beyond the deadline for applying. So, by the time the landowner is made aware of his new market value (and his mistake), it may be too late.

At the beginning of this chapter we asked the question: "Are you one of those thousands of farmers and ranchers whose land is taxed on the basis of a so-called market value of $2, or $10, or $50 dollars an acre when its actual market value is somewhere between $500 and $2,000 an acre, and its actual productivity value, the new *legal* basis of taxation, is between $100 and $400 an acre?" We went on to say that if you answered *Yes,* the Tax Relief Amendment and Tax Relief Bill spell nothing really new for you. What we had in mind, as is now obvious, was the question of the application loophole. (In other respects, the tax relief package may indeed spell something new for you.)

Actually, at the time we were not telling you the whole truth about the loophole. There is something new for you: an implied legislative recognition and acceptance of the loophole, and an explicit legislative mandate that your assessor help you find the loophole in the event it has heretofore escaped your attention.

Chapter Three: Relief By Any Other Name Would Smell As Sweet (June 1980)[101]

Although it probably never will appear in the *Guinness Book of World Records,* Texas offers what has to be the world's largest "partial" residence homestead exemption: $3,000,000,000 of appraised value for state property tax purposes, effective January 1, 1980. Furthermore, if your residence homestead is ever appraised at, say, $3,010,000,000, the state tax on the $10,000,000 that is not exempt will come to *one penny* a year. And if, for example, the value and the tax rate remained constant thereafter, you could put off paying the tax, without penalty or interest, for *500 years.* Meanwhile, your county commissioners court legally could, and probably would, pay the tax to the state on your behalf.

That scenario is presented here for illustrative purposes and is otherwise, obviously, irrelevant and absurd. But what is not at all irrelevant, although perhaps equally absurd, is that by the same stroke of the pen the legislature has granted a very substantial chunk of tax relief to the state's commercial community. Indeed, it's the frosting on a multi-tiered tax relief cake that the legislature put in the oven in 1967. Business and industry and, to a lesser extent, the owners of high-priced homes have been snacking on it since 1969.

A Billion Dollar Bonanza

The total amount of state property tax relief granted from 1969 through 1980 approximates $1,300,000,000, and includes more than $1,275,000,000 that would have been constitutionally earmarked for the maintenance and support of the state's public schools. Left untouched, the state property tax would have produced revenues of more than $300,000,000 in 1980 alone. Now it will actually produce, according to the State Property Tax Board, only $200.

The part of the 1980 difference that is *new,* in the sense of being in addition to previously-enacted relief, amounts to about $67,000,000. That's more relief than farmers and ranchers are expected to get and more than half of what homeowners will enjoy this year under the 1978 Tax Relief Amendment and the 1979 Tax Relief Bill.

Has the billion-dollar bonanza been granted in the name of tax relief? More specifically, was the 1980 addition ($67,000,000) granted by the Tax Relief Amendment or the Tax Relief Bill? *No.* The entire scheme has been promoted and rationalized in terms of (1) turning all property tax authority over to local governments where it rightfully belongs by virtue of its "traditional" role in the American governmental finance system, and (2) eliminating an "outdated and inequitable" tax.

The League Moves the Shells

The push for elimination of the state property tax did not begin in 1962, but that is the year the Texas Research League recommended elimination in a research report that has turned out to be a manual for corporate lobbyists. In its *1979 Annual Report,* the league cites that recommendation, recounts the 1968 constitutional change that "set the pattern of gradual reduction [from 47 cents] . . . to 10 cents" in the state property tax rate, and then boasts that "statutory action in 1979 eliminated even this last vestige of an outdated and inequitable tax."

As to the "traditional" role of the property tax, it is quite true that the American property tax traditionally has been a major revenue source for local governments and a minor source for state governments. And so it has been in Texas. In short, our state property tax has been part of the tradition, not a violation of it.

But was the state property tax outdated and inequitable? In the first instance, the meaning of "outdated" is not entirely clear; perhaps it was simply thrown in as a gratuitous pejorative. In the second instance, the answer is clearly affirmative. The tax was grossly inequitable, primarily because it was levied on county assessed values, secondarily because the accuracy of property appraisals varies widely among counties. The primary problem lies in the fact that each of the 254 counties uses an assessment ratio of its own choosing in computing its assessed values. Some choose assessment ratios of less than 10 percent; some, more than 40 percent. Various reports indicate that the current average lies somewhere between 25 and 33 percent.

The inequity is readily apparent. Taxpayers in a typical 40-percent county, for example, were paying at least four times the state tax paid by taxpayers in a typical 10-percent county (on properties with comparable values). We say "at least four times" because chances are the 40-percent county appraises property more accurately, that is, closer to market value than the 10-percent county.

The Legislature Makes the Final Move

If the legislature's primary concern in 1967 or 1979 had been to make the state property tax more equitable, rather than to grant further tax relief, they could have enacted a state assessment ratio at a level designed to keep future revenues in line with the then-current trend. That is clearly a simple and cost-effective method which would not have placed any undue burden on county assessors or state agencies.

In any event, a uniform, average-level state assessment ratio, in conjunction with a locally-centralized and state-supervised appraisal system (which the legislature *did* enact in 1979), would have solved the equity problem quite adequately.

But equity was *not* the legislature's primary concern, although some of its members might well have been induced to think otherwise. Granted, there was at least one tangential issue of legitimate concern in 1979, but it, like the equity problems, could have been resolved readily and effectively by other means. A far greater concern (and one not so legitimate in our view) was the predictable response of major taxpayers in counties with assessment ratios well below the state average. It just happens that counties with low assessment ratios also tend to have relatively low ratios of people to oil and gas wells (or industrial plants, etc.). For those major taxpayers, adoption of an average-level state assessment ratio would have meant substantial tax increases. In short, call it what you will, the name of the game was *tax relief*—relief from the tax per se *and*, for some, relief from the threat of equity.

The legislature does not have the authority to eliminate the tax absolutely by statute. So, the first and more conventional option available to the legislature was to propose a constitutional amendment. Such a proposal was introduced, but it was vigorously opposed by those several state institutions of higher learning which are now the sole beneficiaries of the state property tax.

Some say the legislative proponents could have prevailed in their pursuit of this proposal but were disinclined to gamble on the possibility that the institutional beneficiaries of the tax might eventually win the battle at the polls.

Enter plan B. A bit unconventional but nonetheless ingenious, the second option was to enact a negligible state assessment ratio—one so low that the practical effect would be to wipe the state property tax off the books. This the legislature presumed it could do, and did, by statute. Effective this year, the state assessment ratio is .0001 percent of county appraised values.

Looking under the Second Shell from the Right

Our world record homestead exemption arises from the state's long-standing exemption of $3,000 of assessed value. At an assessment ratio of .0001 percent (.000001 in decimal form), $3,000 of *assessed* value balloons to $3,000,000,000 of *appraised* value ($3,000 ÷ .000001). As to the one-penny tax on an appraised value of $10,000,000, the computational chain looks like this: appraised value [$10 million] × assessment ratio [.000001] = assessed value [$10] × tax rate [$.10/$100] = tax [$.01]. The previously mentioned 500-year deferment comes from a provision of the Property Tax Code that says you don't have to pay until the tax accumulates to $5.00. So obviously, at one penny a year it takes 500 years to reach $5.00. For all intents and purposes, then, the state property tax on residence homesteads is totally eliminated.

The $200 tax estimated for 1980 is based on an assumed statewide assessed value of $200,000 for all other property (business, industry, oil and gas, etc.). If the new state assessment ratio had not been enacted, we estimate the assessed value of such property would have totaled at least $35,000,000,000.

The Texas Research League is probably justified in claiming a lion's share of the credit for both the gradual reduction and the eventual demise of our state property tax. One thing is certain: big business gets the lion's share of the benefits.

You won't find it under "relief," but it surely must smell as sweet.

Chapter 4, October 1980.

Chapter Four: Here They Come Again (October 1980)[102]

Part I

The seekers of tax relief are already converging on Austin in anticipation of the upcoming regular session of the 67th Legislature. They bring with them some of the schemes past legislatures have considered, and some they have not.

The tax relief seekers may be categorized in several groups and sub-groups. There are those who want relief for all property, others who want relief for selected classes of property (most often for homesteads only). There are (among others) those who would limit increases in tax amounts or taxable values, those who would exempt amounts or percentages of value, those who would freeze taxes or taxable values, those who would defer tax payments, and those who would index property tax amounts according to income levels.

Part I of this chapter deals with the "limiters" and "freezers." We are primarily concerned here with flaws in the proposals, not in the proposers. The latter will not be identified, and we will assume, until convinced otherwise, that they are public-spirited and well-intentioned. We will extend the benefit of the doubt that they are aware of the administrative nightmares, the public costs, and the gross inequities that the adoption of their schemes would create.

Illustrating the Basics

We begin with an illustration of the inequities among three homeowners that arise from each of three tax relief schemes. Scheme I involves limiting increases in the *appraised value* of a property to 10 percent a year; Scheme 2, limiting increases in the *tax amount* for a property to 10 percent a year; Scheme 3, freezing permanently the tax amount paid by elderly or disabled homeowners.

Table 1 contains the primary data for the illustrations in Tables 2, 3 and 4. Note that 1981 appears only in Table 1. It is the base year for each of the three schemes. The first year of actual relief is, therefore, 1982. In Scheme 1, for example, the 1982 *limited* appraised value in Table 2 reflects the maximum allowable increase over the 1981 *full* appraised value in Table 1.

For Schemes 1 and 2, the owners of Homes A, B and C are assumed to be non-elderly and non-disabled. For Scheme 3, the owners are assumed to be either elderly or disabled.

Three years of relief are shown in Tables 2, 3 and 4 simply to indicate the trend in dollar amounts—a trend which would continue so long as the schemes were in effect and all other factors in the computations, such as tax rates, remained constant. In each instance, the amount of relief is derived from the difference between the full values and amounts in Table 1, and the limited or frozen values and amounts in the other tables.

As a reminder that there are two sides to the tax relief coin, the amounts of tax relief are further identified as amounts of tax revenue loss. One taxpayer's relief is another taxpayer's loss, through either reduced public services or shifted tax burdens.

All tax amounts in these tables assume a school tax rate of 1 percent ($1.00/$100 of appraised value) and a combined rate of 1 percent for all other overlapping tax units (city, county, etc.). The mandatory homestead exemptions for school tax purposes are taken into account ($5,000 of appraised value for all homesteads, plus $10,000 for the homesteads of elderly or disabled persons).

With reference to the market values in Table 1, note: 1) that each home has a 1981 value of $50,000; and 2) that while Homes A and B appreciate thereafter at 10 percent a year, Home C appreciates at 15 percent a year. The full appraised values are identical to the market values, with one notable and key exception. Home B is underappraised by $15,000 in 1981.

The full tax amounts in Table 1 result from the application of the previously specified exemptions and rates. The deduction of $100 for elderly and disabled taxpayer applies to each amount shown and reflects the $10,000 mandatory exemption for school tax purposes.

For each of the three schemes, Home A serves as the benchmark. The relief enjoyed by its owner is legitimate with respect to the *intent* of the scheme in each instance. The owners of Homes B and C, on the other hand, enjoy some amount of illegitimate relief. The owner of B benefits from the 1981 undervaluation; the owner of C, from unequal appreciation. And the amounts of excess benefits are rather substantial, especially for Home B. Furthermore, if there were very many like B in the community, the lost revenue would also be substantial.

(For those of you who may be curious about the slightly different amounts of tax relief provided by Schemes 1 and 2, the answer lies in the fact that the relative benefit of a fixed-dollar exemption declines as appraised value increases. As indicated for Home A in Table 1, for example, a 10 percent increase in full appraised value results in a 10.5 percent increase in the full tax amount.)

How serious are the problems revealed in Tables 2, 3 and 4? If there were, as a rule, no significant difference in the accuracy of appraised values or in the rate of appreciation within the same community, the flaws in these schemes would be largely inconsequential. The fact is, however, that such differences are the rule, not the exception, in the great majority of Texas tax units.

Beyond the Basics

In addition to the inequities illustrated in Tables 2, 3 and 4, each of these schemes has its peculiar deficiencies. Consider, for example, the case of two elderly couples whose taxes are frozen at equal appraised values but in different years at different tax rate. Because the Hatfield's taxes are frozen at the 1981 amount, when their appraised value is $50,000 and the total tax rate, as previously defined, is 2 percent, they will continue to pay $850 a year indefinitely. Two years later, the McCoy's taxes are frozen. Their appraised value is the same, $50,000, but the total tax rate has risen to 2.5 percent (1.25 percent for school taxes, 1.25 percent for all other taxes combined). Their future tax bills will come to $1,063 per year—$213 more than the Hatfield's.

The McCoys might also take note of the fact that at the same point in time, the Hatfield's appraised value has increased to $60,500 (10 percent annual appreciation). If the Hatfields are paying $850 on $60,500 and the McCoys are paying $1,063 on $50,000, their *effective* tax rates are 1.4 percent and 2.1 percent, respectively. Their ancestors, we are told, fought over things of far lesser substance.

Consider, too, the effects on inter-category equity if only one category, say homesteads, were subject to a limit on annual percentage increases in appraised value. Tax units, in an effort to minimize revenue losses, could be induced to focus their resources on either of two approaches, both of which could increase inter-category inequities. Some units would undertake an aggressive reappraisal program for homesteads, trying to keep them at the maximum appraised values from year to year. The several other categories of property would tend to get relatively little attention. Other tax units would try to make up their losses by going after those other categories, leaving homesteads pretty much untouched.

If the choice between these approaches were based on considerations of before-and-after equity, the effects would be good. If, for example, businesses previously had been getting the big tax breaks through undervaluation, an aggressive reappraisal of businesses would tend to reduce inter-category inequities. But, unfortunately, the choice of approach would more likely hinge on the distribution of political clout within the community. And those that had the clout (and the tax breaks that generally accompany clout) *before*, would come out as well or better *after* the imposition of the limit on value increases.

Eyes on 1981

Dollar-wise, Schemes 1 and 2 are potentially more significant than Scheme 3. If, for example, either 1 or 2 were extended to cover *all* categories of property, the total amount of tax relief/revenue loss and the degree of tax inequity could be staggering.

Part of Scheme 3 is already in place. The Tax Relief Bill of 1979 (HB 1060) provides such relief, but only for the elderly and only for school district taxes. In our earlier illustration, the point of reference is the proposal to extend the freeze to the disabled and to all taxing units.

Various forms of Schemes 1 and 2 have been proposed repeatedly at the state and local levels in recent years. While it seems clear that they, as well as the extension of Scheme 3, have no legal foundation at present, all that is needed is a constitutional amendment.

It also seems clear, in light of the voters' response to the 1978 Tax Relief Amendment, that if the legislature proposes another amendment to cover any of these or similar schemes, the voters will approve it overwhelmingly—provided, of course, the legislature again gives it the magic caption, "Tax Relief Amendment."

TABLE 1 *BASE DATA: SCHEMES 1, 2 AND 3*

	Homes		
	A	*B*	*C*
Market Value			
1981	$50,000	$50,000	$50,000
1982	55,000	55,000	57,500
1983	60,500	60,500	66,125
1984	66,550	66,550	76,044
Full Appraised Value			
1981	$50,000	$35,000	$50,000
1982	55,000	55,000	57,500
1983	60,500	60,500	66,125
1984	66,550	66,550	76,044
Full Tax Amount (deduct $100 for Elderly/Disabled)			
1981	$ 950	$ 650	$ 950
1982	1,050	1,050	1,100
1983	1,160	1,160	1,273
1984	1,281	1,281	1,471

TABLE 2 *SCHEME 1: LIMIT ANNUAL INCREASES IN APPRAISED VALUE TO 10%*

	Homes		
	A	*B*	*C*
Limited Appraised Value			
1982	$55,000	$38,500	$55,000
1983	60,500	42,350	60,500
1984	66,550	46,585	66,550
Tax Relief/Revenue Loss			
1982	$-0-	$330	$50
1983	-0-	363	113
1984	-0-	399	190
3 yr. Total	$-0-	$1,092	$353
– %	-0-	31%	9%

TABLE 3 *SCHEME 2: LIMIT ANNUAL INCREASES IN TAX AMOUNT TO 10%*

	Homes		
	A	*B*	*C*
Limited Tax Amount			
1982	$1,045	$715	$1,045
1983	1,150	787	1,150
1984	1,264	865	1,264
Tax Relief/Revenue Loss			
1982	$5	$335	$55
1983	10	373	123
1984	17	416	207
3 yr. Total	– $32	$1,124	$385
– %	1%	32%	10%

TABLE 4 *SCHEME 3: FREEZE TAX AMOUNT FOR ELDERLY/DISABLED*

	Homes		
	A	*B*	*C*
Frozen Tax Amount			
1982	$850	$550	$850
1983	850	550	850
1984	850	550	850
Tax Relief/Revenue Loss			
1982	$100	$400	$150
1983	210	510	323
1984	331	631	521
3 yr. Total	– 641	$1,541	$994
– %	20%	48%	28%

Property tax reform continued on the legislative agenda into the 67th Legislature in 1981. The product of this session was HJR 81 calling for a constitutional amendment to permit local taxing entities to exempt a *percentage* of the appraised value of residence homesteads. For the first three years, 1982–84, the maximum exemption would be forty percent of the appraised value. The maximum would then be decreased to thirty percent over the next three years, 1985–87, and to twenty percent for 1988 and thereafter. Craig Foster immediately labeled the proposed constitutional amendment "The Millionaire's Tax Relief Dream."

Foster noted that the exemption was a percentage of the value of the residence and no ceiling was included in the provision. If a taxing unit were to adopt a forty percent exemption in 1982, the resident of a $1,000,000 home would receive a $400,000 tax exemption; the resident of a $10,000 home would receive a $4,000 exemption.

The proposed constitutional amendments received a favorable vote and were adopted on November 13, 1981.

CHAPTER 7

THE PEROT COMMITTEE AND HB 72

THE SCOPE APPOINTMENTS

Following the failure in 1983 of the 68th Legislature to come up with school finance legislation, it opted through HCR 275 for the appointment of a committee to study the problem and make recommendations for the 69th Legislature convening in 1985. This move was not unusual. On the contrary, each time the legislature failed in addressing the problems of school finance, it inevitably followed up with the legislature or the governor naming such a group.

Invariably, the group would meet between legislative sessions and come up with recommendations. The recommendations would be incorporated into a bill and introduced at the beginning of the next legislative session. By the time the proposed legislation went through committee hearings, committee amendments, compromises and hold harmless additions, it had little in common with the recommendations made by the study committee.

The appointment of the Select Committee on Public Education (SCOPE) differed from other study groups in at least three respects: (1) As the committee initiated its hearing and deliberations, a group of low wealth districts filed suit in a state district court on the constitutionality of the existing system of school finance. For the first time since the early portion of the 63rd Legislature in 1973, the courts presented a threat to the traditional inactivity of the Texas Legislature. (2) The committee was not restricted to school finance issues, but was to respond to the general statewide dissatisfaction with public school education. (3) The chairman of the committee was a person with considerable public recognition, political clout and extensive personal resources which he was willing to commit to the effort.

In a September 1983 article,[103] Albert Cortez describes the composition of the select committee appointed by Gov. Mark White, Lt. Gov. William Hobby, House Speaker Gib Lewis and the direction given to the group by Gov. White:

> Following the close of the 1983 Texas legislative session there was broad-based consensus that the state's policy-makers had once again failed to address a plethora of important educational issues including, but not limited to, school finance equity, adequate teacher salaries, categorical program funding, school construction and other areas. Complicated by a drastic cutback in Comptroller Bob Bullock's revenue projections, basic disagreements among the various educational factions on which issues would be considered priority items, and the staunch opposition by the speaker of the House to any tax initiative, the debacle experienced during the legislative session led to the search for an alternative mechanism to address critical issues which remained unresolved. Turning to what is becoming a long-standing practice, the state's political leadership (i.e., Gov. White, Lt. Gov. Hobby, and House Speaker Gib Lewis) opted to form a "select committee" to study the issues and prescribe a comprehensive response to the problems at hand.
>
> The members of the committee were appointed by White, Hobby, and Lewis, and State Board of Education Chairperson Joe Kelly Butler. Gov. White's committee appointments included H. Ross Perot of Dallas, Tony Bonilla of Corpus Christi, Dr. Emmett J. Conrad of Dallas, Charles William Duncan of Houston, and Susan M. Hopkins of Corpus Christi. Lt Gov. Hobby's appointments included State Comptroller Bob Bullock, Dr. Dean Corrigan of College Station, Dr. Elizabeth MacNaughton of Houston, Dr. Levi Perry of Houston, Sen. Carl Parker of Port Arthur, and Dr. John H. Fleming of Fort Worth. House Speaker Gib Lewis' appointments were Rep. Bill Haley of Center,

Rep. Stan Schlueter of Killeen, Rep. Frank Madla of San Antonio, and Edward Clinton Small of Austin. State Board Chairman Joe Kelly Butler, in addition to himself, appointed state board members E.R. Gregg of Jacksonville and Will Davis of Austin.

In his charge to the select committee, Gov. White cited specific areas that he wanted the group to address. The major areas of focus and the specific charges relating to them are summarized below.

1. Teacher Excellence, Competency, and Compensation
    - Review the development of the state's salary schedule and assess its effectiveness for today's needs.
    - Make recommendations for constructive changes and viable alternatives and additions to the current schedule structure, including methods for incentive compensation to meet specific district needs and to compensate quality performance.
    - Review and make recommendations regarding the feasibility of a comprehensive fringe benefits package for educational personnel.
    - Review and coordinate with the State Board of Education, the Commission on Standards for the Teaching Profession, and others in their efforts to fulfill these mandates and propose recommendations as necessary.
2. Distribution of Financial Resources
    - Review the current funding formulas and expenditure levels and propose revisions to meet changing needs and conditions of Texas school districts.
    - Review and make recommendations regarding the components within the foundation school program and their relationship to the true cost of educating Texas students.
    - Review the state/local sharing principle and propose changes as required.
    - Maintain the critical balance of state funding levels among the elements of the foundation school program to avoid any state-created increase in taxes on the local level.
3. The Revenue Package and Its effects
    - Determine the adequacy of current methods of funding and, if necessary, propose and develop alternative methods for future funding, to guarantee equal educational spending and opportunities.
    - Study and propose new and/or alternative revenue sources, tax reform, and relief as necessary to provide a quality educational program.
    - Ensure that any new tax increase or funding adjustment proposed by the committee shall be made only after careful analysis regarding the effect of such changes on local property taxes.
4. Special Programs and Problems
    - Bring our educational system in line with the "high technology" demands of the future, including the emphasis on basic skills, analysis of future job market trends, and the relationship of public schools with vocational programs.
    - Study thoroughly and make recommendations on the issues of discipline and classroom management from both a classroom setting and the teacher training standpoint.
    - Assess the causes of school dropouts and propose alternatives to divert this trend.
    - Address the needs of special populations such as the children of illegal and legal aliens and migrant workers.
    - Examine the role and scope of our regional education service centers and propose recommendations to strengthen their interplay with the state and local districts.
    - Conduct a study to assess the wide-ranging effects of a number of recent and pending court cases affecting our public school system in Texas as we move into the next century.

The governor's communique stressed that efforts of the committee "shall encompass but not necessarily be limited to all of the areas itemized in the charge." The committee was given no definitive timetable for completion of its task, but all indications suggest that it will not submit its reports before November 1983. Proposed meeting dates for the committee include September 14, September 21, September 28, October 12 and October 16. In addition to its Austin meetings, the committee has undertaken numerous site visits to urban, suburban, and rural school districts to acquire varied perspectives on selected issues.

Although the committee has not yet issued a report, various facets of the educational community are expressing concern about the committee's foci. Teachers are concerned about the group's interest in teacher competency and merit pay issues. Bilingual education advocates have taken issue with the group's negative comments concerning the program, and equity proponents bemoan the fact that the wide spending disparities have not been extensively nor aggressively addressed by the committee.

In his letter to the committee, Gov. White proposed to the committee that, "Now we take our place in that line of individuals who have spoken out for quality, for equity, and for recognition of the importance of those who teach our most valuable resource, our children. This select committee stands as our hope for the future." It remains to be seen whether the committee will rise to the occasion.

THE PEROT MEETING

Recognizing the important role that Ross Perot was going to play in what was being perceived as the largest modification of public education in the state since the Gilmer-Aiken legislation of 1949, IDRA staff was anxious to communicate to him our various concerns on legislative issues. I communicated with Mr. Perot, and he agreed to a one-day meeting with IDRA staff. The meeting was held on October 13, 1983, and it lasted more than seven hours.

Our agenda for this meeting was consistent with an article that Albert Cortez and I had published during the 1983 legislative session with a list of specific concerns for the SCOPE deliberations. Our list of topics discussed with Perot included an extensive review of the needs in school finance reform. We presented data on the inequities of the system and the resulting denial of equal educational opportunity. Specifically, we addressed equalization aid as a response to local wealth disparities, school construction and the absence of state equalization or assistance, local enrichment as the major source of expenditure disparities, "save harmless" and "minimum aid" provisions which negated equalization legislation, the inadequacies of categorical funding for children with special needs, and the inequitable distribution of the available school fund.

Other topics addressed that day were bilingual education, competency testing and the higher education needs of minority populations.

Throughout our seven hours of briefing and deliberation, Perot was attentive and inquisitive. Unfortunately, he tended to be simplistic in his responses and conclusions. If equality of educational opportunity was created by the varying wealth of school districts, he immediately concluded that the solution was to transfer wealth so that all districts had similar resources. How the wealth was to be transferred from one district to another in light of *Love v. Dallas,* where the courts prohibited it, did not seem to present any obstacle for him, although he had no idea how it was to be accomplished. If vocational education was being used as a dumping ground for the school's failures, his immediate response was to do away with vocational education. All barriers, impediments and problems brought up in the meeting were similarly dismissed with simple responses.

Our biggest accomplishment that day was convincing Perot of the need for bilingual education programs and his subsequent commitment to support such programs and the necessary funding during the SCOPE hearings and recommendations.

SCOPE HEARINGS AND RECOMMENDATIONS

On November 29, 1983, a group of IDRA staff members presented testimony before SCOPE. Albert Cortez presented the issue on school finance equity, making arguments similar to those we had presented privately to

Perot the previous month. Again, the testimony was well received and was used extensively during subsequent SCOPE deliberations.

After months of public hearings, school site visits, and subcommittee deliberations, SCOPE finally issued its recommendations for the complete overhaul of the Texas public school system. The recommendations were developed by the various subcommittees which had been assigned specific focus areas. These subcommittees included Organization & Management, chaired by Charles Duncan; Finance, chaired by State Comptroller Bob Bullock; Legislative Action & State/Federal Relations, chaired by Sen. Carl Parker; Teaching Profession, chaired by Rep. Bill Haley; and Educating the Child, chaired by John H. Fleming.

Recommendations by the various subcommittees were analyzed and discussed by the full committee during a two-day meeting in March 1984, and final recommendations with designated priority areas were formulated a month later, in the April 19 meeting of the committee.

Although there was major consensus on many of the group's recommendations, there were a few issues which were the subject of extensive debate. When the State Board of Education of the Texas Education Agency declared opposition to many of the policy changes being considered by SCOPE, the committee under Perot's leadership recommended the dismissal of the existing elected state board to be replaced by a nine member board to be appointed by the governor.

The commissioner of education, Dr. Raymon Bynum, met a similar fate in the SCOPE recommendations. Unbelievable as it may sound, Bynum publicly opposed SCOPE recommendations, declaring that Texas could not afford such a large investment in education. Perot saw to it that Bynum's position as a state board appointment was wiped out and replaced by a commissioner nominated by the state board, appointed by the governor and confirmed by the Senate.

The SCOPE recommendations were presented to the governor, the House and the Senate as prescribed in HCR 275. The following is a summary of the recommendations developed for IDRA's *Newsletter* by Jesse Bernal, legislative aide to Sen. Carlos Truan, who monitored the SCOPE meetings:[104]

Summary of Recommendations

1. **Appointed State Board of Education (SBOE)** Abolish the present elected SBOE and replace it with a nine-member board, including a chairman, appointed by the governor with Senate confirmation for staggered six-year terms.
2. **Career Ladder Plan for Teachers** The Career Ladder Plan (CLP) shall include four career ladder levels with required minimum salaries for teachers at each level. Criteria for advancement from one CL level to another will include comprehensive and fair evaluation of actual teacher performance, teaching experience, completion of approved advance course work in the subject taught and/or job-related professional studies in colleges and universities. Comprehensive examinations administered on a statewide basis shall be one of several criteria for advancement to the highest level. It shall not be necessary for any teacher to complete course work in colleges of education in order to qualify for advancement; however, if the professional studies are job-related or of high quality, it should be considered.
3. **Teacher Competency Testing** This recommendation would require all teachers and administrators to pass a basic skills test, including literacy as well as a test measuring subject matter competency. It would make it mandatory for teachers to provide one-time evidence of this. The test shall be adopted and approved by TEA. Multiple opportunities to pass the test shall be provided as set by TEA. Persons who fail to achieve an acceptable score on the test as set by TEA will not be permitted to teach that subject until an acceptable score is achieved.
4. **State Board Authority** The State Board of Education (SBOE) shall be given the clear responsibility and authority to set minimum statewide standards and policy for public education and to direct the state school system.
5. **Annual Reporting by School Districts** The SBOE will direct all independent school districts to submit an annual public performance report. These reports will

provide information with regard to the ISDs' educational quality and financial accountability. It shall emphasize educational performance as well as cost information, including such items as: educational quality; students' test scores; goals and objectives; performance trends of individual campuses to reflect improvements or lack thereof at those campuses; costs by campus and central administration, attendance data, dropout rates; reports on discipline; staff turnover rates and trends by employee type; paperwork reduction efforts; teacher ratios for core programs; and in-service training efforts for staff and board members, among other things.

6. **Management and Financial Reporting by All School Districts** The SBOE shall amend the uniform chart of accounts and develop and implement a management and financial reporting system which will ensure the availability of meaningful cost accounting, as well as provide financial and management information at the state, district, and campus levels. Such information will include, but not be limited to, data needed to monitor the funding process, data on total educational system costs at all levels, and data regarding cost and teacher ratios by individual course and by program.
7. **Equalization Aid to Schools** This recommendation would require the development of a new system for financing public schools that is based on the actual cost of educating children in different localities and giving proportionately more money to districts with the poorest tax bases. State dollars would go to local districts on a per student basis through a basic grant system. The legislature should specifically define the method of arriving at program and service costs, leaving room for periodic adjustments.
8. **Alternate Means of Certification** This recommendation would allow college graduates to be certified as teachers through alternate means of certification, without necessarily going through a college teacher training program. It is the intention of this recommendation that such alternative means of education should not provide a method whereby students avoid increasingly rigorous and effective programs at colleges of education. Instead, the proposed program should provide a means to bring into the teaching profession outstanding students who lack access to excellent colleges of education or who decide to pursue a career in teaching late in their undergraduate education. The program would still require potential teachers to meet high academic standards including all examinations required of certified teachers, as well as the completion of a one-year internship in a public school under the close supervision of an experienced teacher.
9. **Vocational Educational Revisions** This recommendation proposes to eliminate funding for vocational/distributive education that is *more* than the amount spent on other electives, and to require school districts to contract with community colleges and/or industry for outside job training. Local school districts could choose to offer vocational education programs, but the extra cost of those expensive programs would have to come from local tax revenues. These programs would have a sunset provision for evaluation every four years. Vocational education teachers would also teach non-vocational education subjects in which they are certified or be used in other capacities. The use of vocational education facilities for non-vocational programs would be encouraged. Finally, enrollment of 30 students would be necessary to initiate a vocational education program and 20 students would be necessary to sustain the program.
10. **Annualized Testing of all Students** All students will take annual achievement tests provided by the Texas Education Agency (TEA) to measure their progress. Test results will be reported by grade and campus in each local district's annual report. Students in bilingual education programs will be tested in both languages used in instruction.

11. **Supervision of the U.I.L. by the State Board of Education** The University Interscholastic League (UIL) will be placed under the supervision and governance of the State Board of Education (SBOE) and thus removed from the University of Texas at Austin. This means that the SBOE will appoint the members of the UIL executive committee. The University of Texas will continue to provide the administrative and facility support to the UIL, if this is acceptable to the university. The self-governing aspects of the UIL in relation to contest rules will not be changed at all.
12. **Single-Track Curriculum** The State Board of Education will act to improve further the educational programs for the children of Texas through transition from the current curriculum and the dual-track curriculum plan recently approved by the SBOE, to a single-track curriculum after an appropriate phase-in period. This recommendation proposes that *all* students be required to take 22 credit hours and fewer electives. The SBOE plan approved recently calls for dual track curriculum including an advanced college-bound curriculum (22 credits) and a general/vocational curriculum (21 credits).
13. **Teachers' Salary Increase** The minimum salary for beginning teachers should be at least $1,520 monthly. Presently, the minimum is $1,110.
14. **Pre-kindergarten for Four-year-Olds** The state should provide funding for pre-kindergarten education programs for four-year-olds if parents *opt* to send their children to such programs. This would be optional, not mandatory; however, the state would provide the funding.
15. **Class Size Limitations** This recommendation proposes that classes from pre-kindergarten level through the fourth grade should be comprised of no more than 15 students. All class sizes should be a function of subject and teaching methodology.
16. **Compulsory School Attendance at Age Five** The compulsory school attendance age should be lowered to 5 years old. It is presently 7 years old.
17. **Funding for Full-day Kindergarten** The state should fully fund full-day kindergarten for the full academic school year for all children in the public schools of Texas. Under current law, districts can *opt* to provide half-day kindergarten with state funding. If they opt to provide full-day kindergarten, the local district must provide the funding.
18. **Extended School Day** This recommendation would call for a seven-hour academic day for all students, including lunch (plus an appropriate rest period for elementary children). In addition, it calls for a two-hour period of time for TEA-approved enrichment programs that would be "optional," except for those students who need academic help or desire tutorial assistance.
19. **Extended School Year** Each school district should provide for not less than 185 days of instruction for students to begin on Tuesday after Labor Day. The Texas Education Agency (TEA) would also be asked to conduct a study to determine the advantages of the adoption of a common calendar for all districts.
20. **Limits on Extracurricular Activities** Extracurricular activities should not occur during the academic school day. They should not be scheduled during the week of semester final examinations. School districts should be prohibited from scheduling extracurricular activities the week prior to semester final examinations. Students participating in extracurricular activities must maintain a passing grade of 70 or higher in all subjects. To be awarded credit for a course, a student should not be absent from any class or course to participate in any extracurricular activity for more than 10 times during the academic year, or more than five times during any one semester.
21. **Textbook Adoption Procedures** Administrative procedures should provide for a full and open debate of *all* sides of *all* issues brought before the state textbook com-

mittee. Consideration should be given to a four-to-six year adoption cycle. Once textbooks and other instructional materials are approved by the state textbook committee, only the State Board of Education, by majority vote, will have the authority to remove books from the TEA-approved list. Presently, the commissioner of education has that power.

22. **"Adopt-a-School" Plan for Teacher Education Program** This recommendation would require colleges of education at all institutions of higher education to "adopt," manage and operate a school district in cooperation with their teacher training program. This would be under the direct supervision of the local school board. The purpose of this would be to provide the most possible exposure for both potential teacher candidates and the professors in order to enhance the teacher training program. This would be similar to the hospitals used by medical schools to train their interns on the job.
23. **Licensing of Day-care Centers** Require all day-care centers to offer children educationally stimulating programs before they can be licensed.
24. **Support Bilingual Education** The committee recommends support for the full implementation of SB 477 (Bilingual Education Act). It recommends ongoing evaluation of the program and that the findings of that evaluation be presented to the legislature one month prior to the beginning of each regular session. The report will include information on the progress of the program toward preparing limited English proficiency students to enter the mainstream. It also encourages recommendations to facilitate achievement of the program's goals and objectives.
25. **Technology Support** The Texas Education Agency should provide leadership and direction in the assessment, development, and use of technology in all relevant areas of public education. Local school districts should be encouraged to explore, evaluate, and utilize technological alternatives that provide educational opportunities for students.
26. **Summer Enrichment Programs on College Campuses** The committee supports the concept of summer enrichment programs to take place on college campuses in Texas. This would be similar to programs like Upward Bound and the College Assistance Migrant Program (CAMP).
27. **Accreditation Standards for Teacher Education Programs** The State Board of Education should establish rigorous standards and evaluation procedures for all teacher education programs in order to meet accreditation. Programs not meeting accreditation would be placed on probation for 24 months. If by the end of 24 months the teacher education program's deficiency has not been removed, that program would lose accreditation.
28. **Discipline Management Programs for Public Schools** The Texas Education Agency (TEA) shall review and approve a variety of discipline management programs to be implemented by school districts. School districts shall adopt a TEA-approved discipline management program by 1986. This program shall emphasize the involvement and cooperation of administrators, teachers, parents, as well as students. A student code of conduct should be clearly defined and included in the program. The TEA and education service centers shall assist school districts in the development of their discipline management programs by recommending specific training programs available at institutions of higher education such as the Southwest Texas Discipline Training Institute.

The comptroller's office made the following estimates of the additional cost of the SCOPE recommendation on March 27, 1984, and the estimates were published in the June 1984 issue of the *IDRA Newsletter:*[105]

Total Additional Cost per Year (State and Local)
(in millions of dollars)

Proposed change	*1985 Cost*
Lengthen school year by 10 days to 185 days	$95.0
Extend school day 2 hrs. for enrichment	303.0
Full-day kindergarten for 5-year-olds	246.3
Avg. class size of 15 students, Grades 1–4	906.5
Annual nationally normed test	6.6
Four-year-old pre-kindergarten	402.7
Six-year textbook cycle	20.0
Parenthood education	.7
Career ladder (teacher compensation)	359.9
Stipends for upgrading teachers	.5
Increase coordinating board formula (teacher ed)	74.8
Organization and management recommendations	6.7
TOTAL COST (1985)	$2,422.7

The cost of the SCOPE recommendations was estimated to go from $2,422,700,000 in 1985 to $3,303,700,000 in 1986, and to $4,152,900,000 in 1987 as the various recommendations were phased in.

In the same issue in which the recommendations and their costs were published by IDRA, I included an analysis and criticism of the SCOPE recommendations.[106] In general, I could find little relationship between the original criticisms made by Ross Perot of the Texas educational system and the recommendations issued by SCOPE. Moreover, few minority issues were addressed by SCOPE in keeping with the traditional, and erroneous, assumption that a general improvement of education in the state would result in benefits trickling down to the minority students and other atypical school populations.

The following is the text of my analysis of the impact of the SCOPE recommendations on the extension of educational opportunities for Mexican American children:

> During the 1983 session of the Texas legislature, public school finance and teachers' salaries emerged as the dominant issues facing Texas lawmakers. Due to a shortfall of state revenues, a deplorable economy, and extensive infighting among the state leadership, no action was taken by the legislature in addressing the two priority concerns. As has become common practice, the legislature postponed any action by the appointment of the Select Committee on Public Education (SCOPE). The committee's purpose was to study educational problems and make recommendations for some future time when the state leadership hopefully would be able to determine the type of assistance needed by the public schools and the type of tax package necessary to support the revisions.
>
> The select committee, which studied the problem for almost a year under the direction of Ross Perot recently released its recommendations for legislative action. The work of the select committee was heavily influenced by the current national trend for public school reform in the operation of the schools as well as in the method of financing them. The committee's output therefore, goes well beyond the financing of schools and teacher salaries into such topics as the length of the school day, discipline in the schools, teacher training, and a host of other topics. As is the case with the results of many other study committees and commissions, the final product of the SCOPE initiative is a mixed bag including some good recommendations, some irrelevant recommendations, and some dysfunctional recommendations.
>
> The Texas Select Committee on Public Education shares common problems with other contemporary education study committees throughout the country. These shortcomings are enumerated in this article.
>
> 1. The work of the select committee fails to determine the basic causes of the inadequacies of the Texas education system. The Texas education system has been the victim of neglect since its inception. The state's economy, which has been based on agriculture,

oil, and gas, has not emphasized the development of human resources. Efforts to upgrade the state's educational system can be characterized by a consistent pattern of "too little, too late." For decades it has been common knowledge that the Texas has ranked around 40th among the 50 states in educational expenditures. Many of the state's problems are rooted in the low level of educational investments that have been made in the past.

The Texas system of education has always been characterized as an "exclusive" system. Adequate educational opportunities have been provided to a small segment of the population, and little concern has been expressed in the past on the failure to educate the massive numbers of minorities, disadvantaged, or the limited English proficient. On the contrary, efforts to extend educational opportunity to the disenfranchised segments of the population initiated by the federal Department of Justice, the federal Office of Civil Rights, and minority organizations have been fought tooth and nail by the state leadership in the governor's office, the legislature, the attorney general's office, and the Texas Education Agency. Millions of dollars have been expended in state tax revenues to fight the *Rodriguez* case (which sought equalization in school financing), *U.S. v. Texas* (which sought improved educational opportunities for the minorities and the limited English proficient), and *Doe v. Plyer* (which sought a free public education for alien children, a large number of whom are destined to become legal residents).

The role of the non-establishment community in attempting to reform and improve education in this state has not changed from that described by Sen. Carlos Truan as "dragging a fighting and screaming State Board of Education into the 20th century." The recent action of the state board in implementing a structured tracking system in the public schools, and recent efforts by the state legislative leadership to prepare a legislative package for the next session of the legislature which appears to equalize but perpetuates existing inequities, are samples of the state's failure to address basic issues.

2. Another shortcoming of the select committee was its failure to conduct an in-depth analysis of each problem, determine basic causes of the problem, and formulate solutions appropriate for each cause. The state shallowness that characterized the identification of the educational system's failings also characterized the recommendations of the select committee.

In some cases the committee's recommendations attack the symptom of a problem, rather than the problem itself. It is analogous to the case of doctor writing a prescription of aspirin for the pain of a broken leg without attending to the fracture. Similarly, it is frustrating, useless, and even counterproductive for the select committee to come up with a recommendation for improved discipline in the schools without addressing the causes for the breakdown in discipline. This particular recommendation was worded such that it will probably lead to a mass expulsion of students. While that may be desirable for the schools, the addition of large numbers of out-of-school youth to the already explosive number of untrained and unemployable youth exacerbates an already bad situation.

It is clearly disadvantageous to do nothing about the current lack of discipline in schools. However, the solution rests in understanding the causes of good and bad discipline and the consistent relationship between good teaching and good discipline. Inevitably, good discipline results from good teaching and bad discipline results from bad teaching. The select committee should have dug deeper into the reasons for bad teaching which lead to most disciplinary problems rather than treating discipline as an isolated variable.

The same shortcoming holds true for committee recommendations on increasing the length of the school day and the length of the school year. Considering the numerous problems identified by the select committee on the quality of the instructional program in Texas schools, it is surprising to see a recommendation to extend the length of the school day and the length of the school year. Although quantity of exposure to the instructional program may have to be addressed some time in the future, the question of quality must have the highest priority consideration. Increased quantity will result in the same situation that existed in the early days of the federal Title I and migrant programs in which special funding almost exclusively was utilized in order for schools to do the wrong things longer.

3. A third shortcoming of the select committee seems to be modeled on the current federal administrations's pattern of making quick-fix recommendations that may sound good and elicit public support, but have little, if any relationship to existing problems. For example, the president's agreement with the identified problems in *A Nation at Risk,*[107] the report of the National Commission on Excellence, resulted in recommendations for the dismantling of the Department of Education, the passage of tuition tax credits, and a constitutional amendment to allow prayer in the public schools. In the same vein, the select committee made recommendations for increased equalization aid, increased teacher salaries, and smaller classroom sizes. All of the above issues merit support, but do not remedy existing problems.

   The recommendation for equalization aid reflects the shortsightedness of the SCOPE's work. Equalization aid is needed because of the school finance system's dependence on unequalized local resources. Not only did the committee fail to determine any guidelines for what constitutes a desirable level of equalization to compensate for unequal tax wealth available to the various school districts, but the select committee failed to address the basic and secondary causes of the disparities. The distribution of more than 1.33 billion dollars from the available school fund each year on a per pupil basis with no regard to the need of the school districts for additional state funds should have been a major consideration of the select committee. Perot's frequently heard statement that Texas has the largest school construction debt in the country should certainly be coupled with the uniqueness of the state in its failure to furnish any school construction money, again an important consideration not addressed by the select committee in its recommendations.

   Teacher salaries are also an area in which the select committee fell short on its recommendations. In general, it is agreed that teacher salaries are much too low to attract and retain a high quality of instructional staff. It is also agreed that special populations with unique characteristics and problems most need access to top quality personnel, but are precluded from doing so by the salary discrepancies existing between high and low wealth school districts.

   Similarly, the recommendation for smaller size classrooms with a lower pupil-teacher ratio is desirable, but without the funds to meet the associated costs and without the necessary additional classrooms or the means for acquiring them, it is only wishful thinking and outside the realm of reality.

4. A fourth criticism of the recommendations of the Select Committee on Public School Education is the inconsistency of its recommendations. Whereas the committee takes a positive position on the provision of equalization aid to low tax wealth school districts, its recommendation to discontinue the state's vocational education funding with an option for districts to continue the program with local tax funds promotes a disequalizing feature in the program. Thus, one recommendation condemns inequities while another recommendation promotes them.

5. A fifth criticism of the select committee is the number of dysfunctional responses in its recommendations. Increased testing through an extended testing program would probably create more problems and a worse situation in terms of test-oriented instruction than it would resolve. The recommendation for teacher education programs in institutions of higher education to "Adopt-a-School" and manage school programs would further aggravate what is now a bad situation. Opening up teaching positions to every Tom, Dick, and Harry by the recommended alternative to the certification process could lead to an unprecedented flood of incompetents and kooks into school faculties.
6. A final criticism of the select committee is its involvement in political games not really germane to the educational problems which it purported to study. The best example of this failing is its recommendation for the replacement of the currently elected state board with a nine-member board appointed by the governor. There are problems with the oversized and conservative State Board of Education. In general, it is believed that the present board structure is too large, that it has not provided adequate leadership, and that it should be changed. However, the solution is not the replacement of the present board by a nine-member board appointed by the governor.

   One of the strongest characteristics of education in Texas has been its lack of accountability. An appointed board, in addition to an appointed commissioner, does not produce increased accountability. On the contrary, a six-year appointee who is difficult to remove and who may have a term expiring after the governor who made the original appointment is no longer in office does not offer the increased accountability which the select committee sought. Furthermore, the double buffer of an appointed board and an appointed commissioner makes the State Department of Education too far removed from the electorate.

   In addition to this, it must be noted that minorities have had limited representation on appointed boards. If past history is any indicator, under the most favorable conditions the nine-member appointed board will contain one Mexican American, one Black, and one woman. It should be noted that past appointments of minorities have seldom resulted in the selection of active, knowledgeable, outspoken representatives of the minority communities.

   Minorities have labored long and hard for single member district representation. Such gains would be wiped out by an appointed board. If members of the select committee wish to remove certain members of the state board, it is possible to do so through the political process rather than by taking the political process away from the people.

These criticisms of the select committee do not imply that there was no benefit from the committee's work. There were several recommendations on the elimination of the dual-track curriculum, the lowering of the compulsory school age to five, the full-day kindergarten, and support for bilingual education that can be given unqualified support. There are also many recommendations that could be endorsed with an additional qualification or precautionary amendment although a blanket endorsement is impossible.

It is difficult to attempt to reconcile the criticisms that Perot has made about the educational system in Texas with the recommendations made by the select committee. It is very disheartening to agree with virtually every criticism presented by Perot, most of which have been voiced by minorities in schools, the state board, the legislature, and in the courts, and yet not be able to support many of the recommendations presented by the select committee.

A State Coalition on Hispanic Education has been formed in order to analyze, criticize, and determine a position on each of the 28 recommendations made by the select committee on Public Education. The coalition's recommendations, which will be available in the very near future, will serve as an indicator of the positions held by minority advocates on the challenges confronting Texas education.

HB 72 LEGISLATION

Gov. Mark White called a special session of the 68th Legislature to consider the SCOPE recommendations. When the legislature deadlocked on school finance issues and adjourned the first special session without school reform legislation, Gov. Mark White called a second special session. This second session met from June 4 to July 2, 1984, and enacted draconian reform legislation under House Bill 72.

The following is a summary of the contents of HB 72 prepared for IDRA by Jesse Bernal and published in the August 1984 issue of the *IDRA Newsletter.*

1. **State Board of Education (SBOE)** This provision abolishes the current 27-member elected SBOE and replaces it with a 15-member appointed board. The governor will appoint the members from recommendations submitted to him by a Legislative Education Board (LEB), a 10-member legislative committee comprised of the lieutenant governor, speaker of the house, chairman of the House Public Education Committee, chairman of the Senate Finance Committee, chairman of the House Appropriations Committee, two senators appointed by the lieutenant governor and two representatives appointed by the speaker of the house. A transitional SBOE will be appointed by the governor from 15 districts statewide. The LEB will oversee education policy, nominate three persons from each of the 15 districts for appointment, and name the chair of the SBOE. All school districts will elect local school board trustees on the first Saturday in April. In the November, 1988, election, all 15 appointed SBOE members will be replaced by elected members. The members will draw for two- or four-year terms. In short, the appointed SBOE will be only temporary as it will revert to an elected board by November, 1988. The 15 districts have been drawn to ensure the election of at least one Black and three Hispanic members.
2. **School Board Member Training** This provision calls for the SBOE to establish standards for the training of local school board members. It establish a 15-member advisory committee to develop standards for the duties of school board members. Training can also be made available to non-board members. Board members must receive training prior to assuming office.
3. **School Finance and Equalization Aid** The bill eliminates the current school finance system that distributes state monies to districts based primarily on a "personnel unit" salary scheme and replaces it with "basic entitlement" mechanism. The new mechanism based on a weighted pupil approach, will give each school district a basic allotment of $1,290 per school year for each student in average daily attendance (ADA). This amount will be raised to $1,350 for the second year. This basic allotment will be adjusted by a price-differential formula to accommodate geographic variations in the cost of providing basic education. For school districts with less than 3,000 students, the basic allotment level will be further adjusted by a small-district-adjustment formula. In addition to its adjusted basic allotment, each school district will receive special allotments for students enrolled in such special programs as bilingual education, special education, compensatory education and vocational education. For example, in addition to the $1,290 basic allotment, students enrolled in bilingual education will receive a supplemental $129 based on a bilingual allotment weight formula of .10 ($1,290 x .10). Students in compensatory education will receive an additional $258 (1,290 x .20). The weight formulas vary for the different programs. In addition, school districts will receive special allotments for

experienced teachers, educational improvement and support for the career ladder, transportation, and enrichment equalization. The local share of the foundation school program (FSP) will be based on the ratio of a school district's property wealth to statewide property wealth. This ratio will be multiplied by a factor of 30 percent of total FSP costs. "Hold harmless" provisions that reduce local funding obligations under current law will be eliminated. Equalization-transition aid will be granted to school districts that will receive less state aid in the 1984–85 school year under this new mechanism than they received in the 1983–84 school year. The local share of program cost will be 30 percent for the 1984–85 school year and 33.3 percent for the 1985–86 school year.

4. **Textbook Adoption** This provision states that the commissioner of education will no longer review or reject textbooks. The SBOE will be charged with this responsibility. Textbooks will now be adopted for a maximum of six-year cycles.
5. **Uniform School Calendar** Effective September 1, 1985, classes for students may not begin prior to September 1.
6. **School District Performance Reports** This provision requires local school boards to make available to the public and to the SBOE an annual performance report describing the district's educational performance and progress, district-wide as well as by grade level and campus. These reports must include such data as costs; test scores; trends; attendance data; data on employees such as ethnic breakdown, turnover rate, positions held, and so forth; reports on discipline, career ladder; and other similar information as prescribed by the SBOE.
7. **Telecommunications Study** This provision authorizes the Legislative Education Board to study the telecommunication industry and its applicability to education in Texas. It shall also encourage technology education in the schools. An amount of $1,000,000 is appropriated for this study.
8. **Teacher Pay** The bill replaces the pay-grade index in current law with an 11-step state minimum salary schedule. The beginning minimum salary for new teachers starting in September, 1984, will be $15,200 annually, up from the present $11,100. Teachers already employed will be placed on the lowest step of the new schedule providing at least a $1,700 pay increase over the 1983–84 pay schedule. Teachers will receive a raise of $1,140 annually thereafter until they reach the 11th step.
9. **Career Ladder Plan for Teachers** The bill establishes a four-step career ladder plan for teachers with a requirement that the SBOE seek the advice and input of teachers in developing the appraisal process and the performance criteria. The career ladder plan will offer "supplemental" raises up to $6,000 for extra training and outstanding classroom performance. New teachers and most current teachers will begin at ladder level one in 1984. To advance, teachers will have to achieve specified appraisal ratings for specified numbers of years and obtain extra academic training. Teachers who excel and meet other requirements will be able to move up the career ladder and earn supplements (above their state-supported minimum salary) of $2,000 at level two, $4,000 at level three, and $6,000 at level four. The bill also mandates at least two yearly appraisals of the classroom performance of every teacher, to be conducted by specially trained teams. The appraisal team must include at least one administrator and one classroom teacher. Teachers who do not meet statewide appraisal standards can be demoted or not rehired.
10. **Competency Testing for Teachers and Administrators** This provision requires all teachers and administrators to pass a subject area competency test as well as a basic skills test by June 30, 1986. This "one-time" test must be passed as a condition for further employment. The administrator examination must test administrative skills in addition to knowledge in subject areas and other matters the SBOE considers ap-

propriate. The test can be retaken if it is failed. Students preparing to be educators will have take an exit test upon graduation from college.

11. **Length of School Year and In-service Training/Preparation for Teachers** This provision states that each school district must provide not less than 175 days of instruction for students and not less than eight days of in-service training and preparation for teachers for each school year. The provision further states that two preparation days must immediately precede the opening of schools for the regular term, and one preparation day must immediately follow the end of each semester. Finally, it states that teachers may not be required to participate in training or other activities outside the classroom on preparation days.
12. **Minimum Teaching Duties** This provision requires that teachers teach at least four hours each school day.
13. **Supervisor Training and Certification** This provision requires the SBOE to prescribe rules for the training of individuals who supervise teachers.
14. **Management Training for Superintendents and Principals** This provision directs the SBOE to develop a pilot training course focusing on management skills or superintendents and principals. The pilot project will be coordinated between colleges of business and education.
15. **Alternative Certification for Non-education Majors** This provision permits alternative teacher certification of college graduates who have not completed a teacher education program. However, these candidates will have to pass a competency test, serve a one-year internship, and take a number of teaching methods courses in education. The bill will also allow school districts to hire non-certified mathematics and science professionals as part-time teachers only if no certified teachers are available.
16. **Planning and Preparation Time for Teachers** This provision basically clarifies the use of the 45-minute conference period which is already in current law. This period must be used for parent-teacher conferences and review of students' homework in addition to planning and preparation (which is all that is stated in the current law). It further specifies that a teacher may not be required to participate in any other activity during this period.
17. **Substandard Teacher Education Programs** This provision mandates rules for sanctions against substandard college teacher education programs. It requires all college teacher education programs to make annual performance reports to the SBOE. If the commissioner of education determines that a teacher education program fails to meet any accreditation standards prescribed by the SBOE, the commissioner shall give confidential notice of the standard not met to the chief administrator of the program and to any accreditation committee of the institution's board of regents. The SBOE may place the teacher education program on probation for a period of 24 months. The fact that the program is on probation must be published in any admissions catalog concerning the program.
18. **Private Donor Research Fund for Educational Research** This provision directs the SBOE to solicit and dispense private donations and federal funds for education research. It further authorizes a matching state appropriation of up to $5 million.
19. **Teacher Education Loan Program** This provision authorizes loans from two funds to high-ranking college students enrolled in teacher education programs. It allows fund administrators to cancel repayment if the borrowers teach in public schools for four years after obtaining certification. This fund will have a $5 million cap each year.
20. **Teacher Retirement Pay** This provision authorizes increased payments after August, 1984, to retired teachers and survivors of deceased teachers. The increases will be tied to length of service and will apply only below a $25,000 retirement account limit.

21. **Frivolous Lawsuits** This provision makes awards permissible for suits found to be frivolous, unreasonable, and without foundation. It also establishes exemptions which exclude certain types of cases such as civil rights and personal injury or death.
22. **Extracurricular Activities** This provision, which will become effective in the spring of 1985, allows the SBOE to limit extracurricular activities during the school day and the school week by prescribing certain rules. It requires that students be passing all academic courses with at least a grade of 70 (on a scale of 100) in order to participate in extracurricular activities. Mentally retarded and certain honor students are exempt from this provision. The principal may exempt from suspension certain students enrolled in honors or advanced courses. The provision further states that extracurricular activities be precluded from occurring during final exams week and the week prior to final exams. Finally, it provides that student or teacher organizations may meet during the lunch period to conduct business.
23. **University Interscholastic League (UIL)** The bill places the UIL under the control of the SBOE. It provides that all organizations sanctioning UIL competition must have rules consistent with SBOE rules. It further states that UIL rules must be submitted for approval by the SBOE, which can approve, disapprove, or modify any such rules.
24. **Social Promotion, Student Testing, Tutorials, and High School Diploma** This provision states that students will have to maintain an average of at least 70 in order to advance to the next grade or receive credit for a course. Advanced-placement examinations will allow students to skip a primary school grade or a secondary school course. Every district will be required to offer after-school tutorials, however, no student would be *required* to attend. Local districts will be given the discretion as to whether or not to mandate tutorial attendance as well as to when to schedule these tutorial sessions. A student with more than five days of unexcused absences during a semester will not receive credit for a course. Even though school districts will be required to offer tutorial services, they will not be required to furnish transportation for students attending these tutorial sessions. Relative to the testing issue, the Texas Assessment of Basic Skills (TABS) will be extended to include all students in the first, third, fifth, seventh, and ninth grade levels. TABS testing assesses minimum competencies in reading, writing, and mathematics. In addition to these tests, students will also have to pass a 12th grade exit test as a requirement for graduation from high school. This exit exam will be administered at the 11th grade, however, students will have multiple opportunities to retake the test. If a student completes the 12th grade without passing the skills test, he will not receive a high school diploma. Remedial help must be offered for those students who do not pass this test. In a nutshell, the TABS test is being extended to include all those odd-numbered grades not presently tested with TABS (e.g., first, seventh, and eleventh). Finally, the provision requires parental participation in all deliberations involving social promotion, student testing and tutorials. Parental notices must be signed and returned to the school district.
25. **Prekindergarten for Four-year-old Children** Beginning in the 1985–86 school year, school districts will be required to offer a half-day prekindergarten program for four-year-olds if at least 15 children are identified. To qualify, children must be limited-English-proficient (LEP) or from low-income families as prescribed by the SBOE. The bill also provides for exemptions from the commissioner of education if the provision of this mandate means that additional classrooms will have to be created in order to provide this special program. Finally, the provision does not require school districts to provide transportation for children participating in this program.
26. **Preschool, Summer School, and Extended Time Programs:** Effective June, 1985, districts with bilingual education and special-language programs will be required

to offer half-day intensive summer programs that will be optional with the parent of the LEP student. This will be an eight-week summer program for LEP children who will be eligible for admission to kindergarten or the first grade. The program will have to meet standards prescribed by the SBOE. Finally, the student-teacher ratio for the program may not exceed 18 to 1. This provision actually reinforces a similar one that is already part of the Texas Bilingual Education Act (SB 477) authored by Sen. Carlos F. Truan during the 67th Legislature.

27. **Kindergarten** Both houses compromised to maintain the current law relative to kindergarten programs. Currently, local school districts may operate kindergarten on a half-day or full-day option. However, state funding is available for half-day programs only. Local districts must pay the difference if they opt for full-day programs.
28. **Compulsory Attendance** This provision requires a minimum compulsory attendance of 170 days for regular students and 85 days for enrolled prekindergarten or kindergarten students. It also lowers from 17 to 16 the last age at which attendance is compulsory.
29. **Class Size** This provision states that school districts may not enroll more than 22 students (this is a *cap*, not an average) in grades K-2 effective the 1985–86 school year, nor in grades 3 and 4 effective the 1988–89 school year. It also lowers the *average* pupil-teacher ratio to no more than 20 to 1. It is presently 25 to 1. Finally, the provision provides for hardship exemptions as well as exemptions during the final 12 weeks of any school year.
30. **Absences** This provision allows five additional absences per semester beyond those on the statutory list of excused absences as found in Section 21.035 of the Texas Education Code (e.g., personal sickness; sickness or death in the family; quarantine; inclement weather or road conditions making travel dangerous; or any other unusual cause acceptable to the teacher, principal, or superintendent of the school).
31. **Remedial Instruction for Students** This provision provides mandatory remedial programs for any students scoring less than a standard set by the SBOE on achievement and exit tests. These programs may be opened to other students and shall be funded through compensatory education funds.
32. **School Community Guidance Centers** This provision calls for additional training and monitoring requirements as well as parental involvement/participation in school community guidance centers. These centers are similar to alternative schools for children who have problems that interfere with their education.
33. **Discipline Management Program** This provision states that each school district will be required to have a discipline management program, including a student code of conduct and measures to promote parental involvement. It also calls for continuing education for students suspended from the classroom or home campus.
34. **Comparison of Students' Test Results** This provision mandates the Texas Education Agency to compare test results of Texas children to other states' nationally-normed test results.
35. **Removal of Incorrigible Students** This provision mandates rules for the removal of incorrigible students from the schools. It provides placement of incorrigibles in alternative programs and it establishes expulsion in certain cases without need for alternative placement. It defines conditions for incorrigible conduct and specifies various alternative settings.
36. **Dropout Reductions Program** This provision provides alternatives to the education of student dropouts. It requires the Texas Education Agency to develop programs to reduce the rate of students leaving the public school system before completing high school. The goal of the program will be to reduce the statewide dropout rate to not more than 5 percent of the total student population.

37. **Vocational Education Programs** This provision allows the SBOE to set minimum enrollments for funding of vocational programs. The SBOE will review these programs every four years. Except in smaller districts, no vocational program can be offered if initial enrollment is below 30 students. Twenty students will have to be maintained in order to continue the program. All programs must be approved by the SBOE. The bill also calls for the use of vocational teachers and building facilities for other purposes as deemed necessary.
38. **Curriculum Requirements** This provision extends curriculum requirements (as mandated by HB 246 of the 68th Legislature) to include prekindergarten.

In the middle 1970s, Ernest Cortez, a social and civil rights activist, had successfully organized a strong community group in San Antonio, Communities Organized for Public Service (COPS), a Saul Alinski type of group which immediately attained social and political successes in the city. Since 1973, COPS had taken a strong interest in the barrio schools. In that year, I communicated to them that many of the problems that they were addressing could not be solved at the district level. Teacher salaries, instructional materials, facilities, etc. were all a product of the inequitable system of school finance. The inadequacies of teachers, which was one of the foci of COPS involvement in the Harlandale district, could be attributed to teacher attrition as certified and successful teachers tended to move to nearby school districts with higher pay, supplemental benefits and superior teaching environments. (see Chapter 3, "The Harlandale Crisis")

As the work of Perot's SCOPE committee progressed and school finance legislation was considered in the 1984 special legislative sessions, COPS undertook school finance reform as a special organizational topic. Their involvement began with a series of training sessions provided by IDRA staff. We presented to them a synopsis of the system of school finance, problems created for low wealth districts and alternative strategies for addressing the problems. As IDRA had been doing for more than 10 years, we identified the unequalized local enrichment as the main culprit in system inequities and the need to neutralize these unlimited local funds derived with low tax levies in high wealth districts.

Gov. Mark White was awed by the potential political power of the San Antonio COPS and its Rio Grande Valley affiliate. During the special legislative sessions, COPS became a formidable lobbying group for school finance reform. In keeping with the Alinski tradition, such community groups are strongly opposed to sharing credit for successes with any other group. As a result, they purposely shut out IDRA, the Equity Center and other advocacy groups in the final negotiations of House Bill 72.

In our relationships with legislators and with the governor's office, we would not consider any compromise that did not include a solution to the problem of unequalized local enrichment. COPS' leadership was invited to a meeting with the governor and the legislative leadership to work out a final compromise. This was the first time in 10 years that an attempt was being made to come up with a compromise bill in a meeting from which we were excluded. However, we felt that COPS had the political clout to work out a satisfactory compromise, and we were confident that our long training sessions had given them the knowledge to determine the non-negotiables.

We were overjoyed when the governor's office announced that a compromise had been reached, and House Bill 72 would have the necessary votes for enactment. We were devastated to learn subsequently that COPS had traded away unequalized local enrichment for increased levels of funding. During the final negotiations, the COPS leadership forgot our frequent and strong admonitions that there would never be an equitable system without neutralizing wealth differences, limiting unequalized local enrichment or providing unlimited amounts of enrichment aid. COPS was celebrating their "victory" while the more experienced school finance advocacy organizations felt betrayed by COPS. We accurately predicted that large low wealth district gains through the increased funding acquired by COPS would be quickly eroded as the wealthier school districts increased local enrichment to easily maintain their privileged position in the Texas system of school finance.

Our prediction turned out to be true. As COPS celebrated their hollow victory, other advocacy organizations started preparations for the continuation of the *Edgewood v. Bynum* school finance suit. (The removal of Raymon Bynum as commissioner of education by provisions in HB 72 and his replacement by William Kirby changed the litigation to *Edgewood v. Kirby*, the designation it would have through most of the trial.)

By the time *Edgewood v. Kirby* came to trial, in spite of the massive influx of new funds in HB 72, disparities in expenditure levels between high and low wealth districts were greater than they had been prior to the enactment of HB 72.

In April 1985, toward the end of the first year of implementation of the provisions of HB 72, IDRA did a comparison of school district expenditures in Bexar County. Comparing the performance of Alamo Heights ISD, the richest school district in the county, and Edgewood, the poorest in the country, we found that in 1983–84, the last year before HB 72, Alamo Heights had a per pupil expenditure of $3,650; Edgewood had a per pupil expenditure of $2,202. In the first year of HB 72 implementation, Alamo Heights had a per pupil expenditure of $4,031; Edgewood had a per pupil expenditure of $3,090. As a result of HB 72, only 35 percent of the disparity had been eliminated, and even this amount is misleading since much of the small reduction can be attributed to increased funding for special populations, which were much more prevalent in Edgewood than in Alamo Heights.

Subsequent comparisons show that in 1985–86, the average teacher salary in Alamo Heights was $25,829, compared to $21,350 in Edgewood.

The biggest problem in district disparities was still attributed to local enrichment. In 1985–86, Alamo Heights and Edgewood had almost identical true tax rates; $0.567 per $100 valuation in Alamo Heights, $0.563 in Edgewood. This tax rate produced $1,613 per pupil in local enrichment in Alamo Heights and $92 per pupil in local enrichment in Edgewood. Even with $557 in state-matched enrichment, Edgewood had a total of $647 per pupil in total enrichment, compared to $1,613 for Alamo Heights. Thus Alamo Heights enjoyed 2.5 times more enrichment funds for supplemental teacher salaries and benefits, instructional materials, library books, etc. than the Edgewood school district with an almost identical tax rate.

It was evident that HB 72, in spite of its massive infusion of state funds, did not begin to address wealth disparities between the Cadillac and Model T school districts in the state. After 12 years of pursuing equity in the Texas Legislature, there was no other alternative for low wealth school districts but to turn to the courts. The *Edgewood v. Bynum* suit, which had remained dormant during Perot's SCOPE activities and the subsequent HB 72 legislation, immediately resurfaced as *Edgewood v. Kirby* in a state district court.

CHAPTER 8

THE *EDGEWOOD* LITIGATION

INTRODUCTION

Justice Powell's majority opinion in the U.S. Supreme Court's reversal of *Rodriguez* suggested that Demetrio Rodriguez and the other plaintiffs seek redress in the state political processes. Advocates for an equitable system of school finance faced two alternatives: legislation and litigation.

Although legislation was the immediate route taken after *Rodriguez*, and continued as the chosen alternative for more than ten years, litigation in a state court was never abandoned as a feasible alternative.

Chapter 3 presents various studies conducted by TEE/IDRA to determine feasible challenges to the inequitable state system of education. Litigation in other states was not only studied, TEE/IDRA staff were active participants in the researching and planning of such litigation. Using the national network established by James Kelly of the Ford Foundation, there was an extensive amount of information exchange with school finance reform experts in other states. *Newsletter* articles commonly included the status of litigation and the formulation of remedies in *Serrano v. Priest* in California, *Milliken v. Green* in Michigan, *Robinson v. Cahill* in New Jersey, and *Caldwell v. Kansas* in Kansas. Subsequent litigation in other states was similarly monitored as it developed over the years.

THE RETURN TO THE COURTS

The failure of the 68th Legislature to enact any school finance bill in 1983, and the disappointing cycle of legislative study followed by legislative inaction, led to the conclusion that legislation was not a feasible alternative, and if students in low wealth school districts were to receive at least a semblance of a decent education, it would be necessary to pursue the issue in the courts.

In the spring of 1983, IDRA staff initiated a series of meetings with legal staff from the Mexican American Legal Defense and Education Fund (MALDEF), the Edgewood School District, and other community groups to examine the prospects for new school finance litigation against the State of Texas. During the summer of 1983, IDRA, in cooperation with MALDEF and the Edgewood District, sponsored a litigation strategies meeting to discuss the proposed litigation. The meeting was attended by 10 superintendents from districts interested in participating in the court suit and lawyers who had initiated litigation in other states.

The meeting agenda included: (1) a report on various legal approaches used successfully in other states, (2) the research needs in support of the litigation, (3) expected opposition from high wealth school districts and ways to deal with it, (4) the financial resources necessary for the litigation, and (5) tentative time lines for the filing of a state court challenge.

A report of the meeting was presented to the IDRA Board on October 29, 1983, by MALDEF attorney Norma Cantu, who committed MALDEF legal staff in support of the suit. The IDRA Board made a similar commitment to assist in the acquisition, tabulation, and analysis of selected data relevant to the suit, provide training and technical assistance to MALDEF lawyers on the Texas system of school finance, prepare necessary reports and exhibits, provide expert testimony if needed, and disseminate information on the suit to state legislators, educators, interest groups, and the general public.

The litigation strategy included the filing of the case while SCOPE was conducting its deliberations and before the Texas Legislature considered a school finance bill. This strategy resulted in Gov. Mark White calling a special session of the 68th Legislature in 1984 instead of waiting for the SCOPE recommendations to be considered during the 69th Session in 1985.

The following is the report of the June 1984 filing of the *Edgewood v. Bynum* court suit presented by Albert Cortez that same month in the *IDRA Newsletter:*[108]

> After long years of waiting for decisive legislative action, billions of dollars in increased state funding for education, and reams of studies decrying the extent of inequality perpetuated by the Texas system of school finance, a coalition of parents, school districts, school finance reform proponents, and the Mexican American Legal Defense and Educational Fund launched a new legal challenge to the current Texas financing scheme.
>
> The lawsuit was filed against the state of Texas. Named defendants included Raymon Bynum in his capacity as executive officer of the Texas Board of Education, the entire Texas Board of Education, Gov. Mark White, and State Comptroller Bob Bullock. Plaintiffs included the Edgewood, South San Antonio, Eagle Pass, Socorro, San Elizario, Brownsville, Pharr-San Juan-Alamo, and La Vega Independent School Districts; and children and parents residing in the communities of Eagle Pass, El Paso, San Antonio, Mercedes, Brownsville, Laredo, Houston, Mission, and Somerset, as well as McClennan County.
>
> The class action suit alleges that the defendants discriminate and deprive the one million children residing in property poor districts of their right to equal educational opportunity. Specifically, the lawsuit alleges that the fortuitous circumstance of their parents, rather than their individual abilities, efforts, or aspirations control the quality of education these children receive.
>
> The plaintiffs to the suit charge that:
>
> 1. the financing approach is violative of Article VII of the Texas Constitution which provides that, *"It shall be the duty of the Legislature of the State of Texas to establish and make suitable provision for the support and maintenance of an efficient system of public free schools";*
> 2. the defendants' school finance system violates Article I, Section 3 of the State Constitution by discriminating between plaintiffs, taxpayers, parents, and school children in property poor school districts and their counterparts in property rich districts on the basis of property wealth;
> 3. defendants have violated and continue to violate Article I, Section 3 of the Texas Constitution (which provides that *"all free men, when they form a social compact have equal rights, and no man, or set of men, is entitled to exclusive separate public involvements, or privileges, but in consideration of public service"*) by denying property poor school districts the same rights, privileges, and benefits accorded to property rich districts;
> 4. the named defendants, through the existing school finance system, further violate Article I, Section 3a by depriving Mexican Americans and below poverty level students equal rights or equality under law. Defendants' system discriminates against plaintiff parents, taxpayers, and school children of Mexican American national origin and below poverty level students on the basis of national origin and poverty in violation of their right to equal treatment pursuant to Article I, Sections 3 and 3a, of the Texas Constitution; and
> 5. the state further violates these rights by creating and reinforcing unreasonable, discriminatory obstacles to these children's academic achievement and social advancement on the basis of their residency in property poor school districts, a matter over which they have no choice or control.
>
> For the reasons cited, the plaintiff children, parents, and school districts ask for:
>
> 1. a declaratory judgment that the Texas school finance scheme violates the State Constitution, other state laws, and public policy;
> 2. a preliminary and permanent injunction enjoining the defendants from maintaining any school finance scheme which violates the State Constitution, and which compensates for the violations of the Texas constitution in the past; and
> 3. attorneys' fees and costs for the litigation.

At a press conference held in Austin, Texas, plaintiffs, districts, and parents were joined by representatives of LULAC, GI Forum, IDRA, and other groups and individuals supportive of the litigation effort.

Observers anticipate a minimum of two to three months of court hearings on the issue.

The state may attempt to forestall the legal issue by arguing that the Governor's Select Committee recommendations address the grievances raised in the court suit. It remains to be seen whether the court will await legislative action as Gov. Mark White announced on May 25 that he would call a special session of the legislature to deal with the issue of school finance equalization. Recent developments suggest a lack of legislative consensus on any major reform legislation, and a confrontation between the Select Committee proposal and State Board of Education-sponsored legislation is expected.

Ed. Note: At the time of the filing of the Edgewood litigation, the Texas Commissioner of Education was Dr. Raymon Bynum. As the first named defendant, the litigation was titled "Edgewood v. Bynum." By the time of trial, Dr. William N. Kirby had replaced Bynum as commissioner, and the litigation was referred to as "Edgewood v. Kirby." During the last legal challenges, the litigation was referred to as "Edgewood v. Meno," after Lionel R. Meno replaced Kirby.

The failure of Gov. White's Select Committee chaired by Ross Perot to determine any guidelines for what constitutes a desirable level of equalization or to address the primary and secondary causes of disparities, and the ineffectiveness of HB 72 in spite of a $2.8 billion dollar increase in state spending during the following three years, led to equity advocates pushing the litigation agenda.

In March 1985, plaintiffs in *Edgewood v. Kirby* amended their petition filed in the 250th Judicial District Court of Travis County (Austin), Texas. Low wealth school districts participating in the suit were divided into the Plaintiff group made up of the original plaintiffs, with additional school districts opting to join the group as preparation and the trial evolved. Another group of districts participated in the suit as Plaintiff-Intervenors through their institutional membership in the Austin-based Equity Center. The two groups worked closely throughout the trial, and they differed mostly on ideological differences in the legal base for the suit and remedies sought from the court. MALDEF attorneys representing the Plaintiffs had alleged that the state had engaged in discriminatory treatment of Mexican Americans in the system of school finance in violation of guaranteed civil rights, an issue which the Plaintiff-Intervenors did not wish to have addressed in the suit. In the formulation of remedy, the original Plaintiffs sought the complete elimination of wealth differences in the system, while Plaintiff Intervenors usually opted for increased adequacy of the system through an expanded basic program with a reduced impact of wealth differences through limitations on local enrichment.

Albert "Al" H. Kauffman was the lead attorney for the Plaintiffs throughout the suit. Prior to the litigation, Kauffman met with IDRA staff and underwent extensive training on the Texas system of school finance and the various issues which were to become the subject of the litigation. A symbiotic relationship has always existed between MALDEF, with its legal expertise, and IDRA, with its educational and school finance expertise. This type of relationship would last through the trial, and still exists. Much of the subsequent success of the school finance litigation can be attributed to Al Kauffman's legal expertise, his thorough mastering of the field of school finance, and his preparation, dedication, and hard work during the entire litigation era. By the conclusion of the litigation, I doubt that there was a single school finance professor in any university in the country who had a better knowledge of school finance than Al Kauffman.

IDRA's research in preparation for the court case revealed that the massive influx of money provided by HB 72 had reduced the variance in school district spending by only 12 percent and disparities in teacher salaries by only 10 percent. Prospects for further reform through legislation appeared dismal. The educational and political leadership of the state were adamant that the amount of equalization provided by the 1984 legislation was sufficient to provide all children with an equal educational opportunity and that it satisfied the constitutional mandate for an efficient system of schools.

The trial of *Edgewood v. Kirby* was presided over by Judge Harley Clark of the 250th District Court in Austin. It began on January 20, 1987, almost three years after the case had been filed. The trial ended on April 8, 1987. It included some 40 witnesses called to testify,and hundreds of exhibits were presented by Plaintiffs, Plaintiff-Intervenors, Defendants and Defendant-Intervenors during the trial.

By the conclusion of the trial, there were approximately 115 school districts involved in the case among Plaintiffs, Plaintiff- Intervenors and Defendant Intervenors. The alignment of the parties to the suit was very consistent with district wealth, Plaintiff and Plaintiff-Intervenors being among the lowest wealth districts in the state, and Defendant-Intervenors being among the wealthiest districts. About 1,000 school districts did not participate in the case, but anxiously followed the trial, with support or opposition mostly dependent upon district wealth.

The following districts were Plaintiffs at the conclusion of the trial: Edgewood, Socorro, Eagle Pass, Brownsville, San Elizario, South San Antonio, La Vega, Pharr-San Juan-Alamo, Kenedy, Milano, Harlandale and North Forest. Also listed as Plaintiffs were more than 80 parents and children, including Demetrio Rodriguez on his own and in behalf of Patricia and James Rodriguez, his grandchildren now enrolled in the Edgewood schools.

Plaintiff-Intervenor school districts included: Alvarado, Blanket, Burleson, Canutillo, Chilton, Copperas Dove, Covington, Crawford, Crystal City, Early, Edcouch-Elsa, Evant, Fabens, Farwell, Godley, Goldthwaite, Grandview, Hico, Jim Hogg County, Hutto, Jarrell, Jonesboro, Karnes City, La Feria, La Joya, Lampasas, Lasara, Lockhart, Los Fresnos, Lyford, Lytle, Mart, Mercedes, Meridian, Mission, Navasota, Odem-Edroy, Palmer, Princeton, Progreso, Rio Grande City, Roma, Rosebud-Lott, San Antonio, San Saba, Santa Maria, Santa Rosa, Shallowater, Southside, Star, Stockdale, Trenton, Venus, Weatherford and Ysleta.

Defendants in the case were Commissioner of Education William Kirby, the Texas State Board of Education, Gov. Mark White, Comptroller Robert Bullock, and Attorney General Jim Mattox.

The Defendant-Intervenor school districts included: Andrews, Arlington, Austwell Tivoli, Beckville, Carrollton-Farmers Branch, Carthage, Clegurne, Coppell, Crowley, Desoto, Duncanville, Eagle-Mountain-Saginaw, Eanes, Eustace, Glasscock, Grady, Grand Prairie, Grapevine-Colleyville, Hardin Jefferson, Hawkins, Highland Park, Hurst Euless Bedford, Iraan-Sheffield, Irving, Klondike, Lago vista, Lake Travis, Lancaster, Longview, Mansfield, McMullen, Miami, Midway, Mirando City, Northwest, Pinetree, Plano, Prosper, Quitman, Rains, Rankin, Richardson, Riviera, Rockdale, Sheldon, Stanton, Sunnyvale, Willis, and Wink-Loving.

The following excerpts from an IDRA article by Albert Cortez describe events leading to the trial and the litigation strategy:

> The promise embodied in HB 72's revised formulae became an empty one as APAC cost figures were all but ignored by subsequent state legislatures in 1985 and 1987. Rather than increasing state funding to reflect actual costs, the legislature looked to cut selected education programs, reflecting its overwhelming preoccupation with balancing the state budget. Education advocates in turn abandoned their original plans to push for increases in state revenues and to adopt a fall-back position supporting "no cuts" in education funding. Busy hailing the improvement in the status quo achieved with the passage of HB 72, many reform supporters did not heed the reservations voiced by equity advocates that the funding levels allocated for various aspects of the modified school finance system were then, and continued to be, grossly insufficient. With no increase in funding, the promises embodied in HB 72 were never fulfilled. Disenchanted and frustrated with the State Legislature's inability and/or unwillingness to effectively confront the funding equity issue, a small number of low wealth school districts turned to the state courts for judicial resolution of the funding issue.
>
> In court arguments, both Plaintiff and Defendant attorneys presented an array of witnesses and numerous documents to support their respective positions.
>
> For the Plaintiffs, the majority of court testimony and related documents focused on inequalities still perpetuated by the State's revised funding system. Using 1985–86 school district revenue and expenditure data, the Plaintiffs offered exhibits substantiating their claims that the state finance system permitted great variances in the educational opportunities available to children. Plaintiffs also argued that the total absence of state funding for facilities created vast differences in the facilities which housed state-mandated programs.
>
> While the equity shortcomings of the finance system had been long recognized, the state, through the attorney general's office, attempted to defend the status quo as "equitable for a majority

of districts." Additionally, a key aspect of the state's defense centered upon its contention that funding had no significant effect on educational achievement, specifically citing TEAMS performance data to support its claim. A third rationale for perpetuating the existing system proposed by the state, and the attorneys representing intervenor districts who sided with the state, was their insistence that the existing system fostered local control. Defendants argued that any significant change in existing funding practices would erode local district decision-making procedures, and thus threaten statewide public support for future increases in state education funding.

THE CLARK DECISION[109]

On April 29, 1987, only three weeks after concluding hearings, Judge Clark issued a decision finding the Texas system of school finance unconstitutional. The following is the decision issued by Judge Clark:

> They cannot vote yet; they are yet incompletely educated and quite inexperienced. Many are only beginning to learn to read and write. They are still wet and stand upon wobbly legs. They know not the way, so we must lead them.
>
> They know not how, so we must show them.
>
> There are three million public school children in Texas.
>
> The Texas Constitution guides the response our state government must make in regard to the education of these young citizens. In Article 7, section 1 it provides:
>
> > "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."
>
> Our basic law also states, in Article 1, section 3:
>
> "All free men, when they form a social compact, have equal rights. . . ."
>
> As well, by statute in the Texas Education Code, section 16.001, the legislature has set policy regarding these matters:
>
> > "It is the policy of the State of Texas that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors."

I hold that under our State Constitution education is a fundamental right for each of our citizens. To expound a bit, by these edicts then the state is required to devise and continually sponsor a system of finance for our public schools that will give each school district the same ability as every other district to obtain, by state legislative appropriation or by local taxation or both, funds for educational expenditures including facilities and equipment. As a consequence each student by and through his or her school district would have the same opportunity to educational funds as every other student in the state, limited only by discretion given local districts to set local tax rates. Equality of access to funds is the key and is one of the requirements of this fundamental right.

To test the current system against the requirements just mentioned I will make certain findings of fact. (This will not be an exhaustive list but will be illustrative only. A complete list will come later when the Court files findings of fact and conclusions of law.)

The findings are as follows:

1. Texas, in its creation and development of school district boundaries, did not follow any rational or articulated policy. Neither in their creation nor in their perpetuation

has an effort been made to equalize local tax bases. There is no underlying rationale in the district boundaries of many school districts.

2. Historically, there has been a pattern of a wide variation of taxable property wealth per pupil among the state's school districts. These variations have consistently worked against the children attending low wealth districts by restricting the ability of these districts to raise funds from local sources.
3. By agreement of the parties, this case was tried using 1985–86 data as the determinative year.
4. The current Texas public education system is a state system which includes both state appropriations and revenues from local ad valorem taxes. The Texas system in 1985–86 was funded at approximately $11 ,000,000,000.00, 42% of which was provided by the state and 49% of which was provided by local district taxes. The balance was furnished by other sources including the federal government. Of the total expenditures for public education in 1985–86 almost $3,000,000,000.00 was expended by local districts from their local tax bases for enrichment over and above the state sponsored Foundation School Program. (PX 235, Walker and Kirby)
5. There are 1,063 districts in Texas. The wealthiest school district in Texas has over $14,000,000.00 of taxable property wealth per student. The poorest district has approximately $20,000.00 of taxable wealth per student. The 1,000,000 Texas public school students in the districts at the upper range of property wealth have more than 2-½ times as much property wealth to support their schools as the 1,000,000 students in the bottom range of the districts; the 300,000 students in the lowest-wealth schools have less than 3% of the state property value to support their educational systems while the 300,000 students in the highest property wealth districts have almost 25% of the State's total property wealth. (Foster, Hooker PX 102, PX 214, 215, 216)
6. The unequal opportunity to raise funds is exacerbated by the fact that the children with the greatest educational needs are heavily concentrated in the State's poorest districts, because there is a significantly higher percentage of families below the poverty level in low wealth districts than in high wealth districts.
7. In many instances wealthy and poor districts are to be found in the same county. As examples, North Forest, a black (90%) district in Harris County has $67,630 of property value per student while the adjoining Houston I.S.D. has $348,180; the largely Mexican-American (95%) Edgewood District has $38,854 per student, Alamo Heights in the same county has $570,109 per student; Wilmer-Hutchins, a predominantly black (82%) district in Dallas County, has $97,681 per student while Carrollton-Farmers Branch has $512,259 per student. (Foster, Hooker, Collins, PX 33, 210, 214)
8. If every district in the state were taxing the average of what all districts do in fact tax, the combined amounts of state aid and local tax revenue would vary widely across the wealth spectrum under the State's current funding formulas. The result would be:
   a. State and local revenue available for the 150,000 students in the top range of wealth would be more than two times as much as state and local revenue available for the 150,000 students in the bottom range of wealth.
   b. State and local revenue available for the 600,000 students in the top range of wealth would be more than one and one half times as much as state and local revenue available for the 600,000 students in the bottom range of wealth. (Foster, PX 10)
9. Money spent on facilities in Texas public schools is raised exclusively from local school district tax money. The Texas finance formulas do not include the costs of facilities. (Kirby, Hooker, Foster, PX 235)

10. There is a direct positive relationship between the amount of property wealth per student in a district and the amount the district spends on education. Generally speaking, expenditures in a district are a function of property wealth in the district. (Hooker, Foster, Cárdenas, Verstegan, PX 105, 107, 116, 214, 215, 216)
11. The 159 districts with market value of taxable property less than $100,000 per student spent on average $117.00 per student above the Foundation School Program while the 143 districts with taxable values of more than $500,000 per student spent on average $2,287.00 per student above the Foundation School Program. (Pl. Ex. 205)
12. The Foundation School Program does not cover the real cost of education and virtually all districts spend above the Foundation School Program to enrich the educational program and these expenditures are necessary to provide students an adequate educational opportunity.
13. The average tax rate in the State's 100 poorest districts is 74 cents contrasted with 47 cents in the 100 wealthiest; in those same districts the average expenditure per pupil in the poorest districts was $2,978.00 as contrasted with $7,233.00 in the 100 wealthiest. (PX 209, Hooker)
14. There are disparities in the levels of expenditures per pupil between wealthy and poor districts. The 200 school districts at the upper end of the wealth spectrum spent over twice as much per student in 1985–86 as the 200 districts at the lower end of the wealth spectrum, the 150,000 students at the upper end of school district wealth had more than twice as much spent on their education as the 150,000 students at the lower end of school district wealth, and the 600,000 students in the State's wealthiest school districts had 2/3 more spent on their education than the 600,000 students in the State's poorest districts. (P-IX 214, 215, 216, Hooker)
15. The State does not adjust Foundation School Program allotments to take into account mandated increases in the minimum salary schedule and the cost of expanding maximum class size mandates to higher grades; Foundation School Program allotments understate the true costs of meeting State requirements; and there are not State funds provided for facilities. In each instance this means that the necessary funds can only be raised through local property taxes, and the tax rates required to raise each $100.00 of such funds vary widely across the wealth spectrum under the State's current funding formulas. (Pl. Ex. 108-A)

    a. The average rate required for the 150,000 students in the bottom range of wealth is more than eighteen times as much as the average rate required for the 150,000 students in the top range of wealth.
    b. The average rate required for the 300,000 students in the bottom range of wealth is more than eleven times as much as the average rate required for the 300,000 students in the top range of wealth.
    c. The average rate required in the 100 districts in the bottom range of wealth is more than 20 times as much as the average rate required in the 100 districts in the top range of wealth.
    d. The average rate required in the 200 districts in the bottom range of wealth is just under eight times as much as the average rate required in the 200 districts in the top range of wealth.

The Court does not detect in the evidence or the law a compelling reason or objective that would justify continuation of this discrimination.

It has been maintained by the state with evidence and argument that there is not a direct relation between educational expenditures and learning by students as reflected on academic tests such as the TEAMS tests used in this state. This Court, however, does not sit to resolve disputes over educational theory but to enforce our constitution. If one district has more access to funds than another district, the wealthier one will have the best ability to fulfill the needs of its students. The question of discrimination in educational quality must be deemed to be an objective one that looks to what the state provides its children and their school districts, not what the students or the districts are able to do with what they receive. (Mr. Justice Marshall's thoughts, *Rodriguez*, 93 S.Ct. 1278, 1322).

The facts I have recited and found indicate that our financial system, which includes the combination of state and local funds as they currently act in tandem, do not yet meet the requirements of our constitution.

With all due respects to history and to the legislature for its recent generous and thoughtful efforts to rectify this situation, by order of this Court the current system will be set aside.

The original decision was expanded by the following Final Judgement issued by Judge Clark on June 1, 1987:

This cause came on to be tried January 20 through April 8, 1987.

After considering the evidence, argument of counsel, the papers and record herein, the Court is of the opinion, and so finds, that the Texas School Financing System (Texas Education Code §16.01, *et seg.*, implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education) is impermissible, unlawful, violative of, and prohibited by the Constitution and the laws of Texas. Accordingly, Judgment is entered as set out herein.

Declaratory Judgment

Pursuant to the Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code §37.004, the Court hereby declares and enters Judgment that the Texas School Financing System (Texas Education Code §16.01, *et seg.*, implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education) is *unconstitutional and unenforceable in law.*

The Court hereby declares and enters Judgment that the Texas School Financing System (Texas Education Code §16.01, *et seg.*, implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education) is unconstitutional and unenforceable in law because it fails to insure that each school district in this state has the same ability as every other district to obtain, by state legislative appropriation or by local taxation, or both, funds for educational expenditures, including facilities and equipment, such that each student, by and through his or her school district, would have the same opportunity to educational funds as every other student in the state, limited only by discretion given local districts to set local tax rates, provided this does not prohibit the State from taking into consideration the legitimate district and student needs and district and student cost differences associated with providing a public education. During the course of the trial the Court heard substantial evidence on the merits of the State's taking into consideration legitimate cost differences in its funding formula. The Court is persuaded that legitimate cost differences should be considered in any funding formula and would encourage the State to continue to do so. The failure described above denies to Plaintiffs and Plaintiff-Intervenors, as well as to the over one million school children attending school in property-poor school districts, the equal protection of the law, equality under the law, and privileges and immunities, all guaranteed by Art. I, §§3, 3A, 19, and 29 of the Texas Constitution.

Nothing in this Judgment is intended to limit the ability of school districts to raise and spend funds for education greater than that raised or spent by some or all other school districts, so long as each district has available, either through property wealth within its boundaries or state appropriations, the same ability to raise and spend equal amounts per student after taking into consideration the legitimate cost differences in educating students.

Further, the Court hereby declares and enters Judgment that the Texas School Financing System (Texas Education Code §16.01, *et seq.*, implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education) is *unconstitutional and unenforceable in law* because it is not an "efficient system of free public schools" as required by and guaranteed by Art. VII, §1 of the Texas Constitution.

Further, the Court, by virtue of the power conferred on it by Tex. Civ. Prac. & Rem. Code §37.003, to declare rights, status and other legal relations, hereby declares and enters Judgment that the Plaintiffs and Plaintiff-Intervenors and the school children attending school in property-poor school districts are entitled to, conferred with, awarded and guaranteed the equal protection of the law, equality under the law, and the privileges and immunities which flow from Art. I, §§3, 3A, 19, and 29 as well as Art. VII, §1 of the Texas Constitution.

Injunction

It is hereby ordered that William N. Kirby, commissioner of education, the Texas State Board of Education, and Robert Bullock, Comptroller of the State of Texas and their successors, and each of them, be and are hereby enjoined from giving any force and effect to the sections of the Texas Education Code relating to the financing of education, including the Foundation School Program Act (Chapter 16 of the Texas Education Code); specifically said Defendants are hereby enjoined from distributing any money under the current Texas School Financing System (Texas Education Code §16.01, *et seg.*, implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education).

It is further ordered, that this injunction shall in no way be construed as enjoining Defendants, their agents, successors, employees, attorneys, and persons acting in concert with them or under their direction, from enforcing or otherwise implementing any other provisions of the Texas Education Code.

In order to allow Defendants to pursue their appeal, and should this decree be upheld on appeal, to allow sufficient time to enact a constitutionally sufficient plan for funding public education, this injunction is stayed until September 1, 1989. It is further ordered that in the event the legislature enacts a constitutionally sufficient plan by September 1, 1989, this injunction is further stayed until September 1, 1990, in recognition that any modified funding system may require a period of time for implementation. This requirement that the modified system be in place by September 1, 1990, is not intended to require that said modified system be fully implemented by September 1, 1990.

This Court hereby retains jurisdiction of this action to grant further relief whenever necessary or proper pursuant to Tex. Civ. Prac. & Rem. Code §37.011, but, as the Court understands the law, this constitutes no impediment with respect to the finality of this Judgment for the purpose of appeal, and none is intended.

Miscellaneous

This Judgment shall have prospective application only and shall in no way affect (i) the validity, incontestability, obligation to pay, source of payment or enforceability of any presently outstanding bond, note or other security issued, or any contractual obligation, debt or special obligation (irrespective of its source of payment) incurred by a school district in Texas for public school purposes, nor (ii) the validity or enforceability of any tax heretofore levied, or other source of payment provided, or any covenant to levy such tax or provide for such source of payment, for any such bond, note, security, contractual obligation or debt or special obligation, nor (iii) the validity, incontestability, obligation of payment, source of payment or enforceability of any bond, note or other security (irrespective of its source of payment) to be issued and delivered, or any contractual obligation, debt or special obligation (irrespective of its source of payment) incurred by Texas school districts for authorized purposes prior to September 1, 1990, nor (iv) the validity or enforceability of any tax hereafter levied, or other source of payment provided for any such bond, note, or other security (irrespective of its source of payment) issued and delivered, or any covenant to levy such tax or provide for such source of payment, or any contractual obligation, debt or special obligation (irrespective of its source of payment) incurred prior to September 1, 1990, nor (v) the validity or enforceability of any maintenance tax heretofore levied or hereafter levied prior to September 1,

> 1990 (for any and all purposes other than as specified in clause (iv) above), nor (vi) any election heretofore held or to be held prior to September 1, 1990, pertaining to the election of trustees, the authorization of bonds or taxes (either for maintenance or debt purposes), nor (vii) the distribution to school districts of state and federal funds prior to September 1, 1990, in accordance with current procedures and law as may be modified by the legislature in accordance with law prior to September 1, 1990, nor (viii) the budgetary processes and related requirements of Texas school districts now authorized and required by law during the period prior to September 1, 1990, nor (ix) the assessment and collection after September 1, 1990, of any taxes or other revenues levied or imposed for or pledged to the payment of any bonds, notes or other contractual obligation, debt or special obligation issued or incurred prior to September 1, 1990, nor (x) the validity or enforceability, either before or after September 1, 1990, of any guarantee under Subchapter E, Chapter 20, Texas Education Code, of bonds of any school district that are issued and guaranteed prior to September 1, 1990, it being the intention of this Court that this Judgment should be construed and applied in such manner as will permit an orderly transition from an unconstitutional to a constitutional system of school financing without the impairing of any obligation of contract incurred prior to September 1, 1990.
>
> . . .
>
> It is further ordered and adjudged that the Texas School Finance System does not violate Art. I, §3 or Art. I, §3a by discriminating against Mexican-Americans.
>
> It is further ordered and adjudged that because there is not discrimination against Mexican-Americans under the school finance system, the Court will not grant attorney's fees to Plaintiffs under Tex. Civ. Prac. & Rem. Code §106.002.
>
> . . .
>
> It is further ordered, adjudged and decreed that all relief requested and not otherwise granted herein ~~by Defendants and Defendant-Intervenors~~ [Harley Clark 6-1-87] is hereby denied.
>
> It is so ordered, and judgment is hereby entered accordingly.
>
> This is a final Judgment; no issues remain in this case.
>
> Signed and entered and dated this **1st** day of **June** of 1987.
>
> **Harley Clark,** Judge Presiding

Not surprisingly, Defendants and Defendant-Intervenors sought to appeal Judge Clark's decision. On August 27, 1989, as required by court rules and procedures, Judge Clark issued his Findings of Fact and Conclusions of Law in *Edgewood v. Kirby:*

> **I. Introduction**
>
> There are three million public school children in Texas.
>
> The Texas Constitution guides the response our state government must make in regard to the education of these young citizens. In Article 7, section 1 it provides:
>
> "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."
>
> Our basic law also states, in Article 1, section 3:
>
> "All free men, when they form a social compact, have equal rights . . ."
>
> As well, by statute in the Texas Education Code, section 16.001, the legislature has set policy regarding these matters:
>
> "It is the policy of the State of Texas that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall

have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors."

I hold that under our State Constitution education is a fundamental right for each of our citizens.

It is clear that public education is a cornerstone of the Texas Constitution, and providing public education is one of the central reasons for the very existence of the State of Texas. Applying the same rationale as the United States Supreme Court applied in *San Antonio I.S.D. vs. Rodriguez,* 93 S.Ct. 1278 (1973) and *Plylar vs. Doe,* 102 S.Ct. 2382 (1982) the Court concludes that education is indeed a fundamental right, guaranteed by the explicit terms of the Texas Constitution. Furthermore, as detailed below in the fact findings, it is apparent that as a factual matter education is fundamental to the welfare of the State and is a guardian of other important rights.

To expound a bit, by these edicts then the state is required to devise and continually sponsor a system of finance for our public schools that will give each school district the same ability as every other district to obtain, by state legislative appropriation or by local taxation or both, funds for educational expenditures including facilities and equipment. As a consequence, each student by and through his or her school district would have the same opportunity to educational funds as every other student in the state, limited only by discretion given local districts to set local tax rates. Equality of access to funds is the key and is one of the requirements of this fundamental right.

The Court does not detect in the evidence or the law a compelling reason or objective that would justify continuation of the discrimination set forth in my findings below.

It has been maintained by the state with evidence and argument that there is not a direct relation between educational expenditures and learning by students as reflected on academic tests such as the TEAMS tests used in this state. This Court, however, does not sit to resolve disputes over educational theory but to enforce our constitution. If one district has more access to funds than another district, the wealthier one will have the best ability to fulfill the needs of its students. The question of discrimination in educational quality must be deemed to be an objective one that looks to what the state provides its children and their school districts, not what the students or the districts are able to do with what they receive. (Mr. Justice Marshall's thoughts, *Rodriguez,* 93 S.Ct. 1278, 1322)

The facts I have recited and found below indicate that our system of financing public education which includes the combination of state and local funds as they currently act in tandem, does not yet meet the requirements of our constitution.

II. There is a fundamental right implicated in this case

A. Legal Standards

1. The Texas Equal Protection Clause, TEX. CONST. Art. 1, §3, states:

> §3. Equal Rights
>
> Sec. 3. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

2. The Texas Education Clause, TEX. CONST. Art. 7, §1 states:

> §1. Support and maintenance of system of public free schools Section 1. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

3. The Texas Equal Rights Amendment, TEX. CONST. Art. 1, §3a, states:

> §3a. Equality under the law
>
> Sec. 3a. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

4. The Supreme court in *San Antonio Independent School District vs. Rodriguez,* 93 S.Ct. 1278, 1297 (1973) described its method of determining whether an issue is fundamental in the following passage: "The answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution . . ."
5. The Supreme Court restated this test in another Texas case, *Plylar vs. Doe,* 102 S.Ct. 2382, 2395 n.15 (1982): "In determining whether a class-based denial of a particular right is deserving of strict scrutiny under the Equal Protection Clause, we look to the Constitution to see if the right infringed has its source, explicitly or implicitly, therein."
6. The Supreme Court also confirmed that fundamental right analysis was extended to other areas, such as voting, because "we have explained the need for strict scrutiny as arising from the significance of the franchise as the guardian of all other rights." *Plylar vs. Doe,* 102 S.Ct. 2382, 2395 n.15 (1982).
7. In *Plylar vs. Doe,* the Supreme Court found unconstitutional Texas' denial of public education to alien children, noting with respect to education: "education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social cost borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests." 102 S.Ct. at 2397.
8. The Texas Declaration of Independence in reciting the list of grievances against the Mexican Government which justified the Texas Revolution gave paramount importance to the issue of education, making the provision of public education a right of equal stature with the right of trial by jury and the right to worship according to one's conscience. The Declaration recited:

> It has failed to establish any public system of education, although possessed of almost boundless resources, (the public domain;) and although it is an axiom in political science, that unless people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self government.

9. The first Texas Constitution adopted shortly thereafter provided that it shall "be the duty of Congress, as soon as circumstances will permit, to provide by law a general system of education."
10. The Texas Attorney General in 1983 in Opinion JM-60 concluded that:

> Unlike the federal Constitution, the Texas Constitution *does* explicitly provide a right to an education. TEX. CONST. Art. 7. §1. Accordingly, if, in determining whether an asserted right is "fundamental" under our constitution, our courts would apply the same test used by courts in determining whether rights are fundamental under the federal constitution, then the right to an education would, under the Texas Constitution, have to be deemed "fundamental." And if our courts would also analyze the questions raised under the state equal protection clause by applying the same test used by courts in analyzing federal equal protection questions, then state constitutional challenges to Texas statutes affecting education would be resolved by applying the "compelling need" test.

11. Education in Texas is by Constitution and statute a function of the State Government and school districts are mere creatures of the State, established by the State for its convenience in discharging its responsibility to establish and maintain a system of free public education. *Lee vs. Leonard I.S.D.,* 24 S.W. 2d 449 (Tex. Civ. App.—Texarkana 1930, writ ref'd).

12. (Eliminated by Judge Clark).
13. (Eliminated by Judge Clark).
14. Wealth is a suspect category in the context of discrimination against low-income persons by a state school finance system. *Serrano vs. Priest*, 557 P.2d 929, 957 (Cal. 1976). Wealth is a suspect category when a fundamental right is denied because of wealth. *Shapiro vs. Thompson*, 394 U.S. 618 (1969).
15. The California Supreme Court in *Serrano vs. Priest*, 557 P.2d 929 (Cal. 1976), found that education was a fundamental right under its State Constitution. After consideration in detail the public policy implications of education, the California Supreme Court held:

> We declare ourselves at a loss to understand how this provision (California constitutional provision requiring "a system of common schools") can be said to authorize the creation of a system which conditions educational opportunity on the taxable wealth of the district in which the student attends school. *Serrano*, 557 P.2d at 957.

16. The *Serrano* opinion summarized the bases for its findings as follows:

> (1) education is essential in maintaining a "free enterprise democracy" where an individual's opportunity to compete successfully in the economic marketplace is preserved despite a disadvantaged background; (2) education is universally relevant in that every person benefits from education; (3) public education is a government service with a lengthy, intensive contact with the recipient; (4) public education actively shapes a child's personal development in a manner chosen not by the child or his parents but by the state; and (5) education is so important that the state makes compulsory attendance requirements and assignments to particular districts and schools. *Serrano*, 487 P.2d at 1258–59.

17. Education is also a fundamental right under the Constitution of Washington, *Seattle School* District No. 1 of *King County vs. State*, 90 Wash. 2d 476, 485 P.2d 71 (1978); Connecticut, *Horton vs. Meskill*, 172 Conn. 615, 376 A.2d 359 (1977); Wyoming, *Washakie County School District No. 1 vs. Herschler*, 606 P.2d 310 (1980); and West Virginia, *Pauley vs. Kelly*, 255 S.E. 2d 859 (W.Va. 1979).
18. Each of these state supreme courts found education to be a fundamental right under their respective state constitutions, *after Rodriguez, supra.*
19. Arkansas, *Dupree v. Alma School District No. 30*. 651 S.W. 2d 90 (Ark. 1983) found its school finance system unconstitutional without deciding the fundamental-rational basis issue.
20. The U. S. Supreme Court summarized the importance of education in *Brown vs. Board of Education*, 347 U.S. 483, 493 (1954):

> Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available *to all on equal terms*. [emphasis added]

21. As stated by the U. S. Supreme Court in the *Rodriguez* case, "Texas virtually concedes that its historically rooted dual system of financing education could not withstand the strict judicial scrutiny that the Court has found appropriate in reviewing legislative

judgments that interfere with fundamental constitutional rights or that involve suspect classifications," *Rodriguez,* 411 U. S. at 16.

22. According to *Rodriguez vs. San Antonio I.S.D.,* 93 S.Ct. at 1288, and *Dunn vs. Blumstein,* 405 U. S. 330, 343 (1972), the strict scrutiny standard requires that:
    1. the state system is not entitled to the usual presumption of validity;
    2. the state rather than the Plaintiffs must carry a heavy burden of justification;
    3. the state must demonstrate that its educational system has been structured with "precision";
    4. the state must demonstrate that its school finance system is "tailored" narrowly to serve legitimate objectives;
    5. the state must show that it has "selected the [least] drastic means" for effectuating its objective in the area of school finance.

23. Under the Texas Supreme Court's model of strict judicial scrutiny, discrimination against a suspect class or implicating a fundamental interest "is allowed only when the proponent of the discrimination can prove that there is no other manner to protect the state's compelling interest." *In the Interest of Unnamed Baby McLean,* 725 S.W. 2d 696, 698 (Tex. 1987), *Mercer vs. Board of Trustees, North Forest I.S.D.,* 538 S.W. 2d 201 (Tex. Civ. App.—Houston [14th Dist.] 1976, writ ref'd n.r.e.)

B. Summary of Standard To Be Applied

First, the system must be examined to determine if the system of funding public education has an adverse impact or impinges upon the educational opportunities afforded children in this State; if such adverse impact is found then the State must justify the existence of such impact by showing a compelling state interest that mandates such adverse impact.

C. Facts Demonstrating That The Texas System of Funding Public Education Does Have an Adverse Impact And Impinges Upon the Educational Opportunities Afforded Children

The facts in this case support the court's holding that the current system is unconstitutional based on the legal conclusions on fundamental rights, lack of compelling state interests, lack of rational state interest and lack of efficiency. For purposes of organization and reference the facts will be summarized in this section in categories relating to:

1. Education as a fundamental interest in Texas;
2. An overview of the school finance system;
3. Wealth disparities;
4. Variations in expenditures;
5. Variations in tax rates and ability to raise funds at certain tax rates;
6. Effects of wealth differences on expenditures and taxes;
7. Effects of insufficient funds;
8. Facilities;
9. Concentration of low-income students in low-wealth districts;
10. Historical inequities;
11. How the Foundation School Program (FSP) formulas deny equality of access to education funds;
12. District boundaries.

The system must be looked at as an inter-related whole and the listing of a fact in this section of the findings or in any particular subsection does not imply that the fact relates only to one legal conclusion or to one fact issue.

1. Education is Fundamental
    1. Education is a fundamental interest of the state, and the state has both the authority and the responsibility for education, including the methods of raising revenues and allocating funds for schools. Moreover, all school property is state property, all school

funds are state funds, and all school taxes are state taxes. (Walker and Kirby, **The Basics of Texas School Finance,** PX 235 at 62).

   2. In Texas, education is fundamental. (Kirby, Sawyer)
   3. ~~Education is to Texas what national defense is to the United States. (Collins)~~

2. Overview of the System
   1. Financial support for education is an important factor determining the quality of the educational program that can be offered to students attending Texas public schools. The amount of money spent on a student's education has a real and meaningful impact on the educational opportunity offered that student.
   2. The Texas public education system is a State system which includes both state appropriations and revenues from local ad valorem taxes. The Texas system in 1985–86 was funded at approximately $11,000,000,000, 42% of which was provided by the State and 49% of which was provided by local district taxes. The balance was furnished by other sources including federal government funds, which the Court finds to be irrelevant for purposes of determining the issues. Of the total expenditures for public education in 1985–86 almost $3,000,000,000 was expended by local districts from their tax base for enrichment over and above the Foundation School Program (PX 235, Walker, Kirby)
   3. There are 1,063 school districts in Texas educating approximately 3 million students. There is a vast disparity in local property wealth among the school districts. The wealthiest school district in Texas has over $14,000,000 of property wealth per student. The poorest district has approximately $20,000 of property wealth per student. The 1,000,000 Texas public school students in the districts at the upper range of property wealth have more than 2½ times as much property wealth to support their schools as the 1,000,000 students in the bottom range of the districts; the 300,000 students in the lowest-wealth schools have less than 3% of the State property wealth to support their education, while the 300,000 students in the highest property wealth schools have over 25% of the State's total property wealth to support their education. (Foster, Hooker, PX 102, PX 214, 215, 216)
   4. This wealth disparity between districts is based on nothing more than the irrational accident of school district lines and in many instances wealthy and poor districts are to be found in the same county and/or are contiguous to one another.
   5. By agreement of the parties, the case was tried using 1985–86 data as the determinative year.
   6. For 1985–86 on average there was $250,000 of local tax base per student attending public schools in Texas. (PX 205)
   7. For 1985–86, the average operational expenditure per student for school districts in Texas was $3,300. (PX 205)
   8. For 1985–86, the average tax rate for school districts in Texas was $.66. (PX 104)
3. Wealth Disparities
   1. North Forest, a black (90%) district in Harris County has $67,630 of property value per student while the adjoining Houston I.S.D. has $348,180; the largely Mexican-American (95%) Edgewood District has $38,854 per student, Alamo Heights in the same county has $570,109 per student; Wilmer-Hutchins, a predominantly black (82%) district in Dallas County, has $97,681 per student while Carrolton-Farmers Branch has $512,259 per student. (Foster, Hooker, Collins, PX 33, 210, 214)
   2. The wealth disparities with the corresponding expenditure disparities adversely affect a very significant number of students and are not isolated to any particular area, but rather are found statewide as well as within each of the large counties. (PX 210, 211).
   3. The average wealth for the 150,000 students in the top range of wealth is more than *eighteen* times as much as the average wealth for the 150,000 students in the bottom range of wealth. (PX 102)

   4. The average wealth for the 300,000 students in the top range of wealth is more than *eleven* times as much as the average wealth for the 300,000 students in bottom range of wealth. (PX 102)
   5. The average wealth in the 100 districts in the top range of wealth is more than *twenty* times as much as the average wealth in the 100 districts in the bottom range of wealth. (PX 02)
   6. The average wealth in the 200 districts in the top range of wealth is just under *eight* times as much as the average wealth in the 200 districts in the bottom range of wealth. (PX 102)

4. Variations in Expenditures
   1. The rate of expenditure per student in 1985–86 was from $2,112 per student in the district that spent the least per student to $19,333 per student in the district that spent the most per student. (PX 216)
   2. There are disparities in the levels of expenditures per pupil between wealthy and poor districts. The 200 school districts at the upper end of the wealth spectrum spent over twice as much per student in 1985–86 as the 200 districts at the lower end of the wealth spectrum, the 150,000 students at the upper end of school district wealth had more than twice as much spent on their education as the 150,000 students at the lower end of school district wealth, and the 600,000 students in the State's wealthiest school districts had ⅔ more spent on their education than the 600,000 students in the State's poorest districts. (PX 214, 215, 216, Hooker)
   3. The Texas school finance system spends an average of $2,000 more per year on the 150,000 students (5% of total) in the state's wealthiest districts than on the 150,000 students in the state's poorest districts. ~~Ninety-five percent (95%) of the students in the poorest districts are Mexican American.~~ (Foster, PX 214–216, PX 47)
   4. The Texas school finance system spends an average of nearly $1,300 more on the 600,000 students (20% of students) in the wealthier districts in the state than on the 600,000 students in the poorer districts in the state. (Foster, PX 105, PX 214–216)
   5. One relevant way to consider the expenditure of various school districts in Texas is to consider the expenditures per weighted student or per student unit. This method accounts for the extra costs of educating certain types of students in certain types of districts. (Foster, Verstegan, Kirby)
   6. There is a range of expenditures per student unit in Texas of from $9,523 to $1,060, a ratio of 9 to 1. (PX 103, Foster)
   7. The approximately 150,000 students attending the highest spending districts in the state have more than twice as much per student unit spent on them as do the 150,000 students attending the lowest spending districts in the state; the approximately 600,000 students in the state attending higher spending districts have ⅔ more per student unit spent on their education than do the approximately 600,000 students in the state attending lower spending districts. (PX 103, Foster)
   8. The differences in expenditure levels found throughout the state are significant and meaningful in terms of the educational opportunities offered to students and the effect of these differing levels of expenditure is to deprive students within the poor districts of equal educational opportunities. (Hooker, Cárdenas, Zamora, Walker, Sybert, Boyd, Wise)
5. Variations in Tax Rates and Ability to Raise Funds At Certain Tax Rates
   1. The range of local tax rates in 1985–86 was from $.09 to $1.55 per $100 valuation. (PX 215)
   2. The lower expenditures for education in the property poor districts are not the result of lack of tax effort by these districts. Poor districts exert a greater tax effort than the wealthier districts, e.g., the average tax rate in the high wealth districts is 8 cents lower than the average tax rate in the low wealth districts. (Moak, DX 44, Foster)

   3. As a result of the wide variations in school district wealth in Texas there are vastly differing burdens imposed upon district taxpayers to support public education. In the poorest districts it costs taxpayers a tax rate of more than 20 cents per $100.00 valuation to raise $100 per student, while the wealthiest districts can raise such sums per student with tax rates of less than 2 cents per $100 valuation. (PX 102, 209, Foster, Hooker)
   4. Hundreds of thousands of families live in Texas school districts and pay in excess of $1.00 per $100.00 of property wealth on their homes, and hundreds of thousands of families in Texas live in districts where their tax rates are less than $.50 per $100.00 of property wealth. (PX 104, Foster)
   5. Taxpayers in high-wealth districts get significantly more expenditures per student for each penny of tax rate than do taxpayers in low-wealth districts. (PX 110, Foster, Hooker)
   6. For example, to raise $100 revenue:
      a. The average rate required for the 150,000 students in the bottom range of wealth is more than *eighteen* times as much as the average rate required for the 150,000 students In the top range of wealth.
      b. The average rate required for the 300,000 students in the bottom range of wealth is more than *eleven* times as much as the average rate required for the 300,000 students in top range of wealth.
      c. The average rate required in the 100 districts in the bottom range of wealth is more than *twenty* times as much as the average rate required in the 100 districts in the top range or wealth.
      d. The average rate required in the 200 districts in the bottom range of wealth is just under **eight** times as much as the average rate required in the 200 districts in the top range of wealth.
   7. The denial of equal education opportunity for equal tax effort is also illustrated by the fact that the tax rates required to raise the local share of Foundation School Program Allotments, including the 30% add-on for enrichment (Tex. Educ. Code §16.157) vary widely across the wealth spectrum under the State's current funding formulas. (PX 102, 120)
      a. The average rate required for the 150,000 students in the bottom range of wealth is approximately *two* times as much as the average rate required for the 150,000 students in the top range of wealth.
      b. The average rate required for the 300,000 students in the bottom range of wealth is approximately one and two-thirds times as much as the average rate required for the 300,000 students in the top range of wealth.
   8. The unequal tax burdens imposed by the State's system of funding public education is exemplified by the varying amounts of tax paid on a $80,000 house in 1985–86 The highest tax with no exemptions was $1,206 in Leveretts Chapel (a poor district) as compared to $59 in Iraan-Sheffield (a wealthy district). Considering homestead exemptions, the highest tax was in Crystal City I.S.D. (a poor district) levying $1,106 compared to $38 in Iraan-Sheffield. (PX 205)

6. Effects Of Wealth Differences On Expenditures and Taxes
   1. There is a direct positive relationship between the amount of property wealth per student in a district and the amount the district spends on education. Generally speaking, expenditures in a district are a function of property wealth in the district. (Hooker, Foster, Cárdenas, Verstegan, PX 105, 107, 116, 214–216)
   2. The 50 poorest districts had an average tax rate of 71.96 cents (per hundred dollars of property value) and spent on average $2,941.36 per student compared to the 50 richest districts which taxed at 37.26 cents on average and spent $8,700.70 per student on average. (PX 207)

3. The average tax rate in the State's 100 poorest districts is 74.45 cents contrasted with 47.19 cents in the 100 wealthiest; in those same districts the average expenditure per pupil in the poorest districts was $2,978.00 as contrasted with $7,233.22 in the 100 wealthiest. (PX 207, Hooker)
4. The 200 poorest districts had an average tax rate of 74.82 cents and spent on average $3,005.32 per student compared to the 200 richest districts which taxed at 58.79 cents on average and spent $6,017.33 per student on average. (PX 207)
5. The 300 poorest districts had an average tax rate of 75.27 cents and spent on average $3,023.17 per student compared to the 300 richest districts which taxed at 63.24 cents on average and spent $5,320.14 per student on average. (PX 207)
6. The 400 poorest districts had an average tax rate of 74.88 cents and spent on average $3,077.36 per student compared to the 400 richest districts which taxed at 67.17 cents on average and spent $4,936.45 per student on average. (PX 207)
7. The 500 poorest districts had an average tax rate of 75.40 cents and spent on average $3,133.74 per student compared to the 500 richest districts which taxed at 68.64 cents on average and spent $4,648.27 per student on average. (PX 207)
8. The 159 districts with market value of taxable property less than $100,000 per student spent on average $117.00 per student above the Foundation School Program while the 143 districts with taxable values of more than $500,000 per student spent on average $2,287.00 per student above the Foundation School Program. (PX 205)
9. In 1985–86 Edcouch-Elsa I.S.D. with a tax base of $21,293.00 per student taxed at 84.45 cents and spent $2,607.00 per student compared to Santa Gertrudis I.S.D. with a tax base of $14,661,861.00 per student which taxed at 8.62 cents and spent $12,840.00 per students. (PX 214)
10. In 1985–86 the wealthy Highland Park district in Dallas County taxed at 35.16 cents and spent $4,836.00 per student while its poor neighbor Wilmer-Hutchins taxed at $1.05 yet was only able to raise and spent $3,513.00 per student. (PX 214)
11. In 1985–86 the wealthy Lago Vista I.S.D. in Travis County taxed at 36.82 cents and spent $4,473.00 per student while its poor neighbor Taylor I.S.D. taxed at $1.05 yet was only able to raise and spend $3,104.00 per student. (PX 214)
12. In 1985–86 the wealthy Alamo Heights District in Bexar County taxed at 56.76 cents and spent $4,127.00 per student while its poor neighbor Southside I.S.D. taxed at $1.10 yet was only able to raise and spend $2,853.00 per student. (PX 214)
13. In 1985–86 the wealthy Deer Park I.S.D. in Harris County taxed at 64.37 cents and spent $4,846.00 per student while its poor neighbor North Forest I.S.D. taxed at $1.05 yet was only able to raise and spend $3,182.00 per student. (PX 214)
14. The taxpayers in the Highland Park District have almost twice as much to spent per student than do the taxpayers in the Laredo District; Laredo with its high concentration of minority and low income youth has, according to the state's own formulas, significantly greater need for funding than do the students in the Highland Park District. (PX 214–215, 103, 105, Kirby)
15. North Forest I.S.D. and San Elizario I.S.D. maintain tax rates of $1.05 and $1.07 respectively, well above the State average tax rate; each district has far above average costs per student, yet neither district can provide a full range of educational offerings to their students. (PX 116, Sawyer, Boyd, Cárdenas)
16. If every district in the state were making the average total tax effort, the combined amounts of state aid and local tax revenue would vary widely across the wealth spectrum under the State's current funding formulas. The result would be:
    a. State and local revenue available for the 150,000 students in the top range of wealth would be more than *two* times as much as state and local revenue available for the 150,000 students in the bottom range of wealth.

   b. State and local revenue available for the 600,000 students in the top range of wealth would be more than one and one-half times as much as state and local revenue available for the 600,000 students in the bottom range of wealth. (Foster, PX 110)

17. The denial of equal educational opportunity is not based on any rational consideration or policy. Rather these differences in educational opportunity are attributable either to the place of birth or where one's parents choose to live. While children of wealthy and middle-class families may have mobility as their parents are able to move into wealthy districts and acquire for them a superior education, such opportunities are by-and-large not available to the children of the poor and disadvantaged who lack such mobility and are for the most part consigned to inferior school districts.

7. Effects of Insufficient Funds
   1. The biggest challenge facing Texas education today is a need to increase financial support at the State level. (DX 68)
   2. "As in so many things, in education, you get what you pay for" and "the quality of our education system is directly related **to the amount of** money spent on it." (Kirby, PX 38)
   3. Districts that have the available local tax base to significantly enrich their school programs almost inevitably do so; with the result that educational programs in the wealthier school districts are financed at levels substantially higher than the Foundation School Program. (Foster, Hooker, Long, Verstegan, PX 107, 105, 214–216)
   4. Increased financial support enables wealthy school districts to offer much broader and better educational experiences to their students, including such matters as a more extensive curriculum and more co-curricular activities, enhanced educational support through additional training materials and technology, improved libraries and library professionals, additional curriculum and staff development specialists and teacher aides, more extensive counseling services, special programs to combat dropouts, parenting programs to involve the family in the student's educational experience, lower pupil-teacher ratios and the ability to attract and retain better teachers and administrators. (Cárdenas, Zamora, Valverde, Kirby, Bergin, Long, Hooker, Wise, Boyd, Sybert, Sawyer)
   5. Districts which have more property wealth can afford to and do offer higher teacher salaries than other districts in their areas. This allows these wealthier districts to recruit, attract and retain better teachers for their students. Better facilities, more amenities and more support personnel also make high wealth districts better able to compete for, hire and retain high quality teachers. (Wise, Zamora, Valverde, Kirby, Bergin, Hooker, Sawyer, Boyd, Sybert)
   6. High wealth districts can afford to and do hire more curriculum specialists, support personnel, counselors, and offer broader curriculum—characteristics that are especially important for low-income and high risk students who predominately live in low wealth districts. (Valverde, Zamora, Cárdenas, Sawyer, Boyd, Sybert, Hooker)
   7. North Forest I.S.D. in Harris County had the highest failure rate in Texas on the TECAT exam, but is unable to compete with its wealthier neighbors for teachers because it cannot match their salary offerings. Socorro I.S.D. in El Paso County, because of its high growth rate and inadequate facilities has been forced to build new buildings and the district now is unable to make payment on principal and faces potential bankruptcy. San Elizario I.S.D. is so poor that it cannot provide an adequate curriculum for its students; it offers no foreign language, no pre-kindergarten program, no college preparatory program and has virtually no extracurricular activities. (Sawyer, Sybert, Boyd)
   8. The system of public education in Texas does not provide an adequate education to students attending low wealth districts. (Cárdenas, Zamora)
   9. Many low wealth school districts cannot afford to provide an adequate education for all their students. (Cárdenas, Zamora, Sybert, Sawyer, Boyd)

    10. "The educational preparation of over one-third of the state's population is inadequate." (DX 68, p 8)
    11. One-third of the school districts in Texas do not meet the state's standards for maximum class size. (Moak, Bergin, PX 212)
    12. A great majority of the Texas school districts which cannot meet the class size requirements in Texas are low wealth districts. (Bergin, Moak, PX 212)
    13. The great majority of school districts in Texas which are not fully accredited because of inability to meet state standards are low wealth districts. (Bergin, PX 35)
    14. A majority of the Texas school districts which are unable to meet the state's prekindergarten program requirements are low wealth districts. (PX 35, PX 212)
    15. Texas has 44 professional personnel to review the accreditation as well as compliance with curriculum mandates of the 1,063 school districts, the 6,000 school buildings, the approximately 175,000 classrooms and teachers and the 3,000,000 students in the state. (Bergin)
    16. The Foundation School Program (F.S.P.) does not guarantee to each eligible student a basic instructional program suitable to his or her educational needs. (Hooker, Foster, Sybert, Sawyer, Boyd, Padilla, Ortiz, Cárdenas, Zamora)
    17. Students in low wealth districts do not have an equal opportunity to obtain instruction under the state's requirements. (Cárdenas, Hooker, Zamora, Sybert, Boyd, Sawyer)

8. Facilities
    1. Money spent on facilities in Texas public schools is raised virtually exclusively from local school district tax money. The Texas finance formulas do not include the costs of facilities. (Kirby, Hooker, Foster, PX 235)
    2. A significantly greater portion of low wealth than high wealth districts' tax rates go to pay off bonds for construction. (PX 114, 116, Foster, Hooker)
    3. Forty of the 50 states participate in the funding of public school district facilities in some way Texas does not. (Hooker)
    4. Low wealth districts cannot afford to and do not provide as high a quality of facilities as do high wealth districts; this has a negative effect on the educational opportunity of children in those districts. (Hooker, Walker, Sayer, Zamora, Foster, Cárdenas, Boyd, PX 303–305)
    5. School facilities in Texas will present a major problem during the next decade. The problem is a state problem and it will probably require state as opposed to only local district resources to produce an adequate solution. (Lutz, PX 237)
9. Concentrations of Low-Income Students in Low-Wealth Districts
    1. Unequal opportunity to raise funds is exacerbated by the fact that the children with the greatest educational needs are heavily concentrated in the State's poorest districts, because there is a significantly higher percentage of families below the poverty level in low wealth districts than in high wealth districts. (Cortez, Cárdenas, PX 47)
    2. ~~In 1985, 30% of the students in Texas public schools were Mexican-American; 95% of the students in the lowest wealth (5% of total students in state) districts in Texas were Mexican-American; and 60% of the students in the poor districts were Mexican-American. (Cortez, Cárdenas, PX 47)~~ [strikeout by Harley Clark]
    3. According to the 1980 census, 21% of the total Texas population was Mexican-American; 84% of the population in the poorest districts were Mexican-American. (Cortez, Cárdenas, PX 47)
    4. ~~There is a pattern of a great concentration of Mexican Americans in the lower property wealth districts of Texas and an even greater and almost total concentration of Mexican Americans in the lowest property wealth districts in Texas. (Cortez, Cárdenas, PX 47)~~ [strikeout by Harley Clark]
    5. In 1985–86, 36% of the students in Texas schools were low-income; 85% of the students

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   in the lowest-wealth districts (with 5% of students) were low-income; and 60% of the students in the low-wealth districts were low income. (Cortez, Cárdenas, PX 48)
   6. According to the 1980 census, the median family income in Texas was $19,760 and 14% of the families were below poverty levels in the poorest districts (5% of total students) the median family income was $11,590 and 35% of the families were below poverty levels. (Cortez, PX 48)
   7. There is a pattern of a great concentration of both low-income families and students in the poor districts and an even greater concentration of both low-income students and families in the very poorest districts. (Cortez, Cárdenas, PX 48)
   8. ~~There has been a concentration of Mexican American and low wealth families and children in low wealth districts in Texas for many years. (Cortez, Cárdenas, Zamora, PX 47, 48)~~ [strikeout by Harley Clark]
   9. It is significantly more expensive to provide an equal educational opportunity to low-income children and Mexican-American children than to educate higher income and non-minority children. (Cárdenas, Zamora, Kirby)
   10. ~~There has been long term under funding of districts which are seeking to educate Mexican American and low income persons, and this under funding has caused these groups a special disadvantage under the school finance systems in Texas. (Zamora, Cárdenas, PX 47, 48, 33, DX 68)~~ [strikeout by Harley Clark]
   11. ~~Texas will not support a system of school finance that sends too much money to minority and poor districts. (Kirby, PX 39)~~ [strikeout by Harley Clark]
   12. Forty-five percent (45%) of Hispanic ninth grade students in public schools in Texas are dropping out of school before graduation; 34% of Blacks and 27% of Whites are dropping out. (Cortez, PX 49)
   13. Hispanic youth, age 16 to 19, were twice as likely, and youth age 20 to 24, nearly three times as likely to have left school prior to the completion of the twelfth grade as their White counterparts. (Cortez, PX 49)
   14. Nearly half of Hispanic dropouts complete less than ninth grade when they discontinue schooling compared to 18 percent of White and Black dropouts who discontinue schooling before ninth grade. (Cortez, PX 49)

10. Historical Inequities
   1. ~~Before House Bill 72 in 1984–85, education in the low wealth districts was inadequate. (Kirby)~~ [strikeout by Harley Clark]
   2. Historically, there has been a pattern of a wide variation of property wealth per pupil, expenditure per pupil, and tax rates in school districts in Texas. These variations have consistently worked against the children attending low wealth districts, the districts themselves and the taxpayers in those districts. (Walker, Moak, Cárdenas)
   3. There has been a consistent historical underfunding of low wealth districts in Texas. (Hooker, Walker, Cárdenas)
   4. The buildings and teachers and programs which low wealth districts are presently using to educate their children were bought or developed with inadequate funding; this inadequate funding has a negative effect on present day operations. (Cárdenas, Hooker)
   5. The Texas school finance system has and continues to deny equal educational opportunity to students in low wealth districts, especially atypical students. (Cárdenas, Hooker)
   6. The Texas school finance system has had and continues to have a negative impact on the education of students in low wealth districts in terms of their ability to learn, ability to master basic skills, ability to acquire saleable skills, and their quality of life. (Cárdenas, Walker, Sybert, Boyd, Hooker)

11. How the Foundation School Program (FSP) Formulas Deny Equality of Access to Education Funds

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1. The Foundation School Program (FSP) does not cover the real cost of education and virtually all districts spend above the Foundation School Program to enrich the educational program and these expenditures are necessary to provide students an adequate educational opportunity. (Hooker, Foster)
2. Approximately $3,600 (excluding federal funding, debt and facilities) per student is expended to provide the education programs which are available to (1) the students in the districts which meet the criteria for "quality" established by the State's Advisory Committee on Accountable Costs, and (2) the 600,000 students in the state's wealthiest school districts. At least this level of expenditure is necessary to provide an adequate educational opportunity, including basic and enrichment programs. (Hooker, Foster, PX 212, PX 105-E)
3. The formulas and factors which determine Foundation School Program (FSP) allotments do not fully state the real cost of providing adequate education programs. Some program costs are unstated, e.g., implementation of maximum salary schedule and maximum class. The program costs which are acknowledged are understated, most notably the Basic Allotment and the weights for Compensatory and Bilingual Education. (Hooker)
4. The acknowledged program costs, i.e., the FSP allotments, average just under $2700 per student, including $600 indirectly acknowledged through the Enrichment Equalization Allotment. The difference between adequate program expenditures and acknowledged program costs is, therefore, at least an average $900 per student. (PX 101-B, PX 105-E)
5. There are no FSP allotments for facilities. All costs of facilities, including debt service on bonds issued for facilities, are unstated costs. Debt service averages just under $300 per student. (PX 105-H)
6. The tax rates required to meet the local share of FSP allotments, including the Enrichment Equalization Allotment, range from less than $.02 in the richest district to $.86 in the fourth poorest district; from $.38 on the average for the 600,000 students in the richest districts to $.55 for the 600,000 students in the poorest districts. (PX 120-A)
7. The *additional* tax rates required to fund unstated and understated program costs vary widely among school districts as a function of their taxable property wealth. The tax rates required on the average to raise $900 per student range from less than $.01 in the richest district to more than $4.00 in the poorest district; from $.18 on the average for the 600,000 students in the richest districts to $1.23 for the 600,000 students in the poorest districts. (PX 102-A)
8. The *further additional* tax rates required to fund current bonded debt service range from about $.08 on the average for the 600,000 students in the richest districts to $.21 for the 600,000 students in the poorest districts. (PX 106-A)
9. When the tax rates required to raise unstated and understated program costs, as well as the rates needed for debt service, are added to the rates required to raise the local share of FSP allotments, the *combined* tax rates range from less than $.03 in the richest district to more than $5.00 in the poorest district; from $.64 on the average for the 600,000 students in the richest districts to nearly $2.00 for the 600,000 students in the poorest districts. (PX 101, 102, 105, 106, 120)
10. The failure of the FSP formula allotments to include the real costs of providing an adequate educational opportunity means that at least an average $900 of program costs, and all facilities costs, are totally unequalized and are therefore funded only to the extent that local taxpayers are willing and able to assume the additional burden. (Foster, Hooker, PX 101, 102, 105, 106, 120)

11. More than 200 of the state's poorest school districts, which serve over 400,000 students, cannot legally raise an additional $900 per student for programs, because to do so would require tax rates in excess of the $1.50 statutory limit. (PX 102-A)
12. Actual program expenditures per student range from $400 below the acknowledged cost level in the poorest district to $8,000 above in the richest district; from an average of $100 *below* the acknowledged cost level for the 600,000 students in the poorest districts to nearly $900 *above* for the 600,000 students in the richest districts. (PX 105)
13. The failure to acknowledge the real costs of providing an adequate educational opportunity is disadvantageous for poor districts, advantageous for rich districts, and serves the interests of those who seek to minimize state expenditures for public education. Understating costs actually has the effect of distributing more state aid to rich districts than they would otherwise receive. Further, rich districts can fund unacknowledged but necessary costs at modest tax rates and are therefore better able to attract better personnel and more new taxpayers. Acknowledging the real costs would flow more state funds into poor districts, which would then be able to compete more favorably for personnel and taxpayers. (Foster, Hooker, Walker)
14. The Basic Allotment purports to represent the true accountable cost of providing a suitable education program for a regular student. Instead, the $1,350 Basic Allotment adopted for 1985–86 in House Bill 72 was established on the basis of a predetermined level of appropriation for the Foundation School Program. The amount recommended by the Select Committee on Public Education was nearly $600 higher; the amount approved by the Senate in Senate Bill 4 (68th Leg., 2nd C.S.) was almost $500 higher. (Hooker, Foster)
15. A research report published by the Accountable Cost Advisory Committee in 1986, pursuant to T.E.C. §16.202, indicates that the Basic Allotment for 1985–86 should have been at least $2,000—more than $600 above the adopted amount. (Hooker, PX 212)
16. Because the Foundation School Program special program allotments (Special Education, Compensatory Education, Vocational Education, and Gifted and Talented Education) are determined by multiplying the Basic Allotment by special program weights specified in T.E.C. Chapter 16, these allotments understate the cost of the special programs at least to the same degree that the Basic Allotment understates the cost of the regular program. (Hooker, Foster)
17. School district budgeted expenditures for 1985–86 were greater than the corresponding Foundation School Program allotments, by 46% on the average and by 87% at the 95th percentile of students ranked by expenditures per student.
18. TEX .EDUC. CODE (T.E.C.) §16.004, "Scope of Program," is inadequate because it does not include the costs of facilities or debt service and the amount of state aid to each school district is based on factors other than the district's ability to support its public schools.
19. T.E.C. §§16.055 & 16.056, "Compensation of Professional and Paraprofessional Personnel," require districts to pay minimum graduated salaries to teachers while the school finance system does not provide low-wealth districts with sufficient funding to compete for teachers and meet other needs of their educational programs. The state program specifically does not increase F.S.P. Allotments to cover annual increments in the salary schedule.
20. T.E.C. §§16.057 and 16.158, "Career Ladder Salary Supplement," is underfunded by the state program. The state program specifically does not increase F.S.P. Allotments to fully cover increments in career ladder costs.
21. T.E.C. §16.101, "Basic Allotment," is the major cause of the inadequacy of the state

program. The Basic Allotment is significantly below the actual costs it purports to represent.

22. T.E.C. §16.102, "Adjusted Basic Allotment," 16.103 "Small District Adjustment," and 16.104 "Sparsity Adjustment" are inadequate since they are based on an inadequate Basic Allotment, T.E.C. §16.101.
23. T.E.C. §16.151, "Special Education," is inadequate since it is based on an inadequate Basic Allotment, T.E.C. §16.101.
24. T.E.C. §16.152, "Compensatory Education Allotment," is inadequate since it is based on an inadequate Basic Allotment, and the program weight does not reflect the actual additional costs of compensatory education.
25. T.E.C. §16.153, "Bilingual Education Allotment," is inadequate since it is based on an inadequate Basic Allotment, T.E.C. §16.101. Also, the program weight does not reflect the actual additional costs of bilingual programs.
26. T.E.C. §16.155, "Vocational Education Allotment" is inadequate since it is based on an inadequate Basic Allotment, T.E.C. §16.101.
27. T.E.C. §16.156, "Transportation Allotment" is inadequate because it is below the actual costs of transportation, and does not include costs of replacing school buses.
28. T.E.C. §16.157, "Enrichment Equalization Allotment" does not equalize either actual program enrichment or the 30% program enrichment which it purports to equalize. (Foster, PX 103, 112)
29. T.E.C. §16.159, "Gifted and Talented Student Allotment," is inadequate since it is based on an inadequate Basic Allotment, T.E.C. 16.101.
30. T.E.C. §16.251, "Financing; General Rule" is inadequate for each of the reasons stated in the other findings. The true costs of an adequate educational opportunity are not included in the Foundation School Program and cannot be funded by an equalized local school district effort.
31. T.E.C. §16.252, "Local Share of Program Cost" is inadequate to the extent that the percentage of the total Foundation School Program costs included in the statewide local share is so low that it dilutes state funding by sending monies to high wealth districts when those monies could increase the equity of the system by being sent to low wealth districts. The "local share" percentage ("N") in §16.252 does not maximize the equalization of the distribution of the state share of the Foundation School Program.
32. T.E.C. §16.253, "Excess of Local Funds Over Amount Assigned" is inadequate to the extent that it allows wealthy districts discretion to raise enrichment monies for their districts without allowing equal discretion for low wealth districts and for each of the reasons stated in the other findings.
33. T.E.C. §16.254(d) results in a disequalizing distribution of state aid shortfalls. The average tax rate required to replace prorated state aid reduction for the 300,000 students in the poorest districts is more than *eleven* times as much as the average tax rate required to do so for the 300,000 students in the richest districts; for the 600,000 students in the poorest districts the average rate is nearly *seven* times as much as the average rate for the 600,000 students in the richest districts. (PX 108)
34. The State does not adjust Foundation School Program allotments to take into account mandated increases in the minimum salary schedule and the cost of expanding maximum class size mandates to higher grades; Foundation School Program allotments understate the true costs of meeting State requirements; and there are no State funds provided for facilities. In each instance this means that the necessary funds can only be raised through local property taxes, and the tax rates required to raise each $100.00 of such funds vary widely across the wealth spectrum under the State's current funding formulas. (PX 108)

a. The average rate required for the 150,000 students in the bottom range of wealth is more than *eighteen* times as much as the average rate required for the 150,000 students in the top range of wealth.
b. The average rate required for the 300,000 students in the bottom range of wealth is more than *eleven* times as much as the average rate required the 300,000 students in top range of wealth.
c. The average rate required in the 100 districts in the bottom range of wealth is more than *twenty* times as much as the average rate required in the 100 districts in the top range of wealth.
d. The average rate required in the 200 districts in the bottom range of wealth is just under *eight* times as much as the average rate required the 200 districts in the top range of wealth.

12. District Boundaries
   1. Texas, in its creation and development of school district boundaries, did not follow any rational or articulated policy. Neither in their creation nor in their perpetuation has an effort been made to equalize local tax bases. There is no underlying rationale in the district boundaries of many school districts in Texas and there are many districts that are pure tax havens. (Hooker, Moak, PX 25, 26, 239)
   2. Historically, there has been a pattern of a wide variation of taxable property wealth per pupil among the state's school districts. These variations have consistently worked against the children attending low wealth districts by restricting the ability of these districts to raise funds from local sources. (Cárdenas, Hooker)
   3. Texas contains many counties with both very low and very high property wealth districts. (Hooker, Moak, Kirby, PX 1, 214, 215, 216, 241, 242, 243, 244, 245, 246)
   4. Tax haven districts exist in many counties in the state. A tax haven district exists mainly to protect the high property wealth of a district from taxation. (Hooker, Collins, Kirby, Foster, Moak, PX 2, 214–216, 241–246)
   5. Many school districts in the state cross county lines. (PX 1, Kirby, Long)
   6. The Carrollton-Farmers Branch district includes parts of more than five cities and two counties. (PX 1, Long)
   7. Property poor school districts are trapped in a cycle of poverty from which there is no opportunity to free themselves. Because of their inadequate tax base, property poor districts typically must tax at significantly higher rates than their wealthier neighbors to meet minimum educational requirements, and their education programs are typically inferior. The location of new industry and development is strongly influenced by tax rates and the quality of the schools. Thus, the property poor districts with their high tax rates and inferior schools have little or no opportunity to improve their tax base by attracting new industry or development. (Foster, Wise, Sawyer, Sybert)
   8. The funds of the Available School Fund are sent to many budget balanced districts which, at less than average tax rates, could still spend above the state average expenditure without these funds. Sending the Available School Fund monies to the counties for distribution to districts according to need would be a fairer allocation of these monies. (Hooker)
   9. Present district configurations produce wholly unjustifiable disparities in the expenditures per student in Texas depending upon the wealth of the districts in which the student resides and similarly produce unjustifiable disparities in tax burdens depending upon the accident of property wealth per district.

D. Facts Demonstrating That the Adverse Impact Found to Exist as a Result of the State System of Public School Finance Is Not Justified by a Compelling State Interest

The State and Defendant-Intervenors have offered two justifications for the adverse impact found in the State System of Public School Finance, local control and preservation of community interest.

1. Local Control

   1. The State has proffered the preservation of local control as a justification for the State's funding scheme. This justification is not embodied in statute or Constitution. The Court, based on the following fact findings, concludes that the claim of local control is factually insufficient to justify the discrimination found in the State's system of funding public education.
   2. Local control of school district operations in Texas has diminished dramatically in recent years, and today most of the meaningful incidents of the education process are determined and controlled by state statute and / or State Board of Education rule, including such matters as curriculum, course content, textbooks, hours of instruction, pupil teacher ratios, training of teachers, administrators and school board members, teacher testing and review of personnel decisions and policies. (Bergin, Long, Kirby)
   3. The one element of local control that remains undiminished is the power of wealthy school districts to fund education at virtually any level they choose as contrasted with the property poor districts who enjoy no such local control. The property poor districts have little or no local control because of their inadequate property tax base; the bulk of the revenues they generate are consumed by the building of necessary facilities and compliance with State mandated requirements. (Foster, Hooker, PX 107)
   4. Local control is largely meaningless except to the extent that wealthy districts are empowered to enrich their educational programs through their local property tax base, a power which is not shared equally by the State's property poor districts. (Sawyer, Sybert, Boyd, Hooker, Foster)
   5. Local control would not be compromised by a funding system which insured equalized opportunity for local districts to fund their educational programs. (Wise, Hooker)
   6. Local control could exist in a funding system that assured equality of educational opportunity. (Wise, Hooker)
   7. "The State Board of Education is the primary policy-making body for public education and directs the public school system in accordance with law." TEX. EDUC. CODE §11.26(a)
   8. TEX. EDUC. CODE, §11.13, "Appeals," creates an extremely broad appeal by "persons" to the Commissioner of Education for any matter arising from an action or decision of a local school board.

      §11.13 Appeals

      > (a) Persons have any matter of dispute among them arising under the school laws of Texas or any person aggrieved by the school laws of Texas or by actions or decisions of any board of trustees or board of education may appeal in writing to the commissioner of education, who, after due notice to the parties interested, shall hold a hearing and render a decision without cost to the parties involved, but nothing contained in this section shall deprive any party of any legal remedy.

   9. "State-level school authorities, of which the Commissioner is the executive officer, have discretionary power that supersedes local authority in such matters as textbooks, course requirements, and numerous functions and activities included within the Foundation School Program which the State subsidizes." *Spring Independent School District vs. Dillon*, 683 S.W. 2d 832, 389 (Tex. Civ. App.—Austin, 1984, no writ)
   10. "State-level school authorities claim, by regulations set forth in 19 Tex. Admin. Code,

supra, a similar power over local school authorities in an astonishing array of other matters." *Spring I.S.D., Id.*

11. "State-level school authorities have or claim discretionary power in numerous matters that pertain to local school operation, management and government . . . ," *Spring I.S.D., supra* at 840.
12. The Court concludes that local control, as it exists in Texas, is not a compelling interest sufficient to support the state's school finance system. This conclusion is based on the testimony at trial as well as the following partial list of state requirements on local districts. The Court does not find these requirements unconstitutional, but only illustrative of the lack of effective local control in Texas. State Statutes, regulations, interpretations and monitoring intrude on every aspect of school district operation. Illustrative examples of the scope and detail of these rules from the Texas Education Code (TEC) and Texas Administrative Code (TAC) in the areas of administration and finance, students and personnel follow. Local school districts must:

    (a) Administration, finance and record-keeping
    1. Be accredited by the TEA (TEA 16.053 and TEC 21.751)
    2. Publish an annual performance report and file it with the State Board of Education (SBOE) in conformance with rules established by the SBOE to include by campus, scores on tests national norms; performance trends; costs for instruction, instructional administration, and central administration; attendance; date; dropout ratios; reports on discipline; data on employees; reports on employee turnover; reports on pupil-teacher ratios by grade groupings and by program. (TEC 21.258)
    3. Start school on or after September 1 of each year. (TEC 21.001)
    4. Spend no more than 15% of compensatory education funds for administrative costs. (TAC 89.191c)
    5. Spend no more than 15% of bilingual funds for administrative costs. (TAC 77.362b)
    6. Submit a year end report on bilingual program expenditures in accord with guidelines developed by the TEA. (TAC 77.362d)
    7. Limit announcements on the public address system in public schools to one during the school day except for emergencies. (TEC. 21.923)
    8. Utilize funds allotted for vocational education for programs, services, and activities specifically approved by the Central Education Agency. (TAC 78.69a)
    9. Enroll a minimum number of students in vocational program units specified by the Central Education Agency in order to be allotted funds. (TAC 78.69c)
    10. Have approval by the Central Education Agency of all vocational program units in order for them to be counted for vocational program allotment purposes. (TAC 78.69a)
    11. Keep auditable data on participation in free and reduced priced meal programs in order to qualify for compensatory funds. (TEC 16.152b)
    12. Have all fiscal accounts audited annually by an external auditor. (TEC 21.256)
    13. Have a school day of not less than seven hours each day. (TEC 21.004)
    14. Seek competitive bids on all purchases of $5,000 or more. (TEC 21.901)
    15. Have the State Property Tax Board conduct annual studies of school district taxable property values, and it is the results of those studies, rather

than locally assessed values, that are used in determining how much state aid each district is entitled to. (TEC 11.86, TEC 16.252)

16. Meet minimum standards established by the SBOE for the operation of libraries to include library personnel, acquisition of materials, and development of learning resource programs. (TEC 11.36)
17. Have their Boards of Trustees complete a minimum of twenty hours of training by sponsors approved by the TEA to gain a working knowledge of all the Statewide Standards on the Duties of a School Board Member. Further requires minutes to reflect the members who have and have not completed the required training and making this information available to the local media. (TEC 23.33b and TAC 61.174k)
18. Require the president of the local board of trustees to prepare, or cause to be prepared, not later than August 20 of each year, a budget covering all estimated receipts and proposed expenditures of the district for the next succeeding fiscal year. (TEC 23.41, 23.42)
19. File copies of the adopted budget in the office of the county clerk in the county or counties in which the district is located and with the Central Education Agency. (TEC 23.46)
20. File copies of any amendment or supplementary budget, when adopted, with the county clerk in the county or counties in which the district is located and with the Central Education Agency on forms provided by that Agency. (TEC 23.47b)
21. Follow extensive procedures for seeking and awarding the bid for the depository of the district's funds. (TEC 23.74, 23.76, 23.77, 23.78 and 23.79)
22. Establish a local advisory council for vocational education. (TAC 78.6)
23. Comply with numerous and specific provisions in notices for board meetings, the keeping of minutes, executive sessions, emergency sessions, etc.
24. Maintain documents in support of data submitted to TEA for financial and sick leave purposes. (TAC 121.11)
25. Maintain current and complete personnel records of all employees. (TAC 121.11)
26. Report annually to the State Health Dept. on the examinations and reexaminations of tuberculosis results. (Texas Board of Health under authority granted by Art. 4477–12, Sec. 5(a), V.A.T.S.)
27. At the end of each school year to file a report with TEA setting out total number of days of sick leave utilized by qualified district personnel. (TEC 13.904b)
28. Establish advisory committee for public participation of community members concerned with educational programming for the handicapped. (TAC 89.244d)
29. Give homestead exemptions on residence homesteads in the amount of $5,000 and an additional $10,000 exemption for adults who are sixty-five or older. (Tax Code 11.13 b, c)
30. Limit their tax bond indebtedness to 10% of the assessed valuation of taxable property in the district. (TEC 20.04b, c)
31. Have a public hearing if the board adopts a tax rate that exceeds the effective rate by more than 3%. (Tax Code 26.05c)
32. Adopt a standard school fiscal accounting system, keyed to budget classifications with respect to the purposes of disbursements and the sources of receipts. (TEC 23.48 a)

33. Operate their school buses on TEA approved routes, and no variations shall be made from such approved routes. (TEC 21.276)
34. Furnish the commissioner of education a list of all bus routes and transportation systems for review. (TEC 21.177 a)
35. Follow specific procedures of the Purchasing and General Services Commission in disposing of used school buses. (TEC 21.167)
36. Use academic achievement record (transcript) form adopted by the State Board. Their form shall serve as the academic record for each student and shall be maintained permanently by the districts. (TAC 75.153a)
37. Attach to the academic record of students who complete high school graduation requirements the State Board approved seal indicating which high school program was completed. (TAC 75.153c)
38. Develop procedures for determining student progress and reporting to parents for students at the kindergarten and prekindergarten level. (TAX 75.191)
39. Determine student academic achievement using a numerical score on a scale of 0–100. (TAC 75.191)
40. Maintain a student achievement record on each student enrolled in the district. (TAC 61.163, 75.153 a)
41. Give written notice to parents of students' grades in each class or subject at least once every six weeks. The report shall include the number of times the student has been absent. The notice shall provide for the parent's signature and must be returned to the District. If the notice is not returned to the district, the district shall mail notice to the parent. (TEC 21.7222)
42. Submit description of courses to be designated as honors courses to the commissioner of education for review and approval within the time periods specified by State Board rule. (TAC 75.152d)
43. Report grades in grades 7–12 to parents as numerical grades and in grades K-6 as letter grades, and may use pluses or minuses. (TAC 75.191)
44. Record a 50 for any numerical grade earned that is lower than 50. (TAC 75.191)
45. Use numerical scores on all academic achievement records and maintain them in the permanent records. (TAC 75.191)
46. Display the flag of the State of Texas regularly and prominently on or about school premises, as a prerequisite for receiving allocations of state funds appropriated to the Texas Education Agency. (Appropriations Act, 69th Legislature, Reg. Sess., 1985, House Bill 20, Article III, Rider No. 14.)

(b) Curriculum and students

The State Board of Education has promulgated 350 pages of regulations that detail the content of every course in every year in every school district in the state. (Chapter 75). For example pre-kindergarten students must learn to "develop pincher control," TAC 75.21 (c)(2)(B)(ii), and homemaking students must learn to "identify principles of pleasing interior decoration." TAC 75.83(b)(4)(c), and "recognize commitments made In marriage vows." TAC 75.83(d)(2)(c). Furthermore, state laws and regulations require school districts to:

1. Maintain free public kindergartens for all children who are at least five years of age. (TEC 21.131)
2. Offer free pre-kindergarten classes on a ½-day basis for children who are

at least four years of age if the district identifies 15 or more eligible children. (TEC 21.136)

3. Offer a curriculum that includes 12 specified areas of study. (TEC 21.101)
4. Use SBOE approved methods for screening students for dyslexia and providing instructional services to those students. (TEC 21.924)
5. Deny course credit if a student has more than five days of unexcused absences during a semester. (TEC 21.041)
6. Administer state criterion referenced tests (TEAMS test) designed by the TEA in grades 1, 3, 5, 7, 9, and 11. (TEC 21.551)
7. Meet qualifications prescribed by State Board of Education (SBOE) for "instructional arrangements" for special education children. (TEC 16.151d)
8. Have SBOE approval of all day contract placements for special education children. (TAC 89.227e)
9. Have a comprehensive special education program approved by SBOE. (TAC 89.250d)
10. Provide a TEA approved bilingual or special language program if the district has an enrollment of 20 or more students of limited English proficiency of any language classification in the same grade level. (TEC 21.453c)
11. Comply with SBOE rules on bilingual education regarding program content and design, program coverage, identification procedures, classification procedures, staffing, learning materials, and testing materials. (TEC 21.461)
12. Have approved by TEA any gifted and talented program. (TEC 21.654)
13. Adopt and implement an SBOE approved discipline management program with a designated person with special training to lead the program on each campus. Requires two parent conferences be held each year, parent training workshops to be offered, and written statement signed by each parent acknowledging and implying consent to the discipline management plan. (TEC 21.701 and 21.702)
14. Comply with SBOE rules limiting participation in extracurricular activities. (TEC 21.920)
15. Limit students to no more than ten days of absence from any one class for purposes of extracurricular activities. (TAC 97.113)
16. Enforce suspension from extracurricular activities for a period of six weeks if a student fails to achieve a grade of 70 or better in any one course. (TAC 97.113)
17. Prohibit social promotion for students who have not maintained a grade average of at least 70. (TEC 21.721)
18. Provide not less than 175 days of instruction and not less than eight days of in-service and preparation for teachers. (TEC 21.001)
19. Operate an SBOE approved alternative education program for pupils found guilty of incorrigible conduct. (TEC 21.301k)
20. Force all students to take a final examination in any class in which any other student is required to take a final examination. (TEC 21.723)
21. Select textbooks from a list adopted by the SBOE. The list typically has only five possible selections from which to choose.
22. Follow extensive procedures when considering the suspension or expulsion of a student. (TEC 21.301 and 21.3001)
23. Teach only courses approved by the TEA. (TAC 91.114)
24. Certify as graduates only those who have completed a course of study prescribed by the SBOE. (TAC 97.116)

25. Provide a minimum of 160 hours of instruction in a course in grades 9–12 in order for credit to be granted. (TAC 97.114)
26. Offer in grades 1–3 no less than 600 minutes per week of instruction in language arts, 300 minutes in mathematics, 100 minutes in social studies. (TAC 75.141)
27. Administer TEA approved advanced placement examinations for grades 1–5 and academic subjects in grades 6–12, as designated by the commissioner of education. (TAC 75.172a)
28. Annually to appoint a textbook committee composed of no fewer than five and not more than fifteen members. (TAC 81.131a2)
29. Give written notice to the student's parent within ten days after the student's classification of limited English proficient, requesting approval to place the student in an ESL program. (TAC 77.360c)
30. Provide students an opportunity to complete subject or courses begun but not successfully completed during the regular school term during summer school. Such courses shall include all state-required essential elements specified for the course. Student progress shall be evaluated according to the same achievement standards as those used during the regular term. (TAC 75.168)
31. Ensure that students participating in honors courses or programs are instructed in all essential elements and demonstrate an acceptable degree of mastery of those elements. (TAC 75.152c)
32. Submit descriptions of courses to be designated as honors courses to the commissioner of education for review and approval within the time periods specified by State Board rule. (TAC 75.152d)
33. Award credit for a full-year (1 unit) course on a semester-by-semester basis. (TAC 75.192c)
34. Ensure that students participating in honors courses or programs are instructed in all essential elements and demonstrate an acceptable degree of mastery of those elements. (TAC 75.152c)
35. Devote the equivalent of 112 minutes per week, in grades four-six, to both physical education and fine arts, provided that districts may choose to alternate two and three periods of instruction weekly by dropping to the equivalent of 90 minutes one week and increasing to the equivalent 135 minutes the next week for each subject on a rotating basis. (TAC 75.141(e)(5)
36. Devote no less than 40 percent of the instructional day, in kindergarten, to the teaching of English language arts. (TAC 75.141(c)(1)
37. Teach language arts in grades one-three daily and no less than 600 minutes per week. (TAC 75.141td)(1)
38. Implement secondary curriculum based on units which, at grade six, shall constitute a minimum of 45 minutes of academically engaged time per day for a subject during a 175-day school year. (TAC 75.142(a)(2)
39. Permit a student to take a locally developed elective, not to exceed one semester, during grade seven or eight or both. (TAC 75.142(b)(10)

(c) Personnel and School Boards

1. Pay certified personnel no less than a specified minimum salary based upon years of experience. (TEC 16.056c)

1.5. Maintain student-teacher ratios for bilingual or special language programs not to exceed 18-1. (TEC 21.458)

2. Assign teachers to a level on the career ladder and to pay those teachers on level two no less than a $1,500 supplement, level three—$3,000, level four—$4,500. (TEC 13.301)
3. Utilize an SBOE-adopted appraisal instrument and to use two different appraisers for each appraisal. The appraisal process must guarantee a conference between appraisers and appraisees and the conference must be both diagnostic and prescriptive. Must have a minimum of two appraisals per school year. (TEC 13.302 and 13.303)
4. Assign classroom teaching duties of not less than four hours per day to each teacher who is identified for purposes of Texas Education Code as a teacher. (TEC 13.907)
5. Provide each teacher with at least 45-minute planning period during the seven-hour day.
6. Provide each teacher with a 30-minute duty-free lunch period. (TEC 13.909)
7. Provide each district administrator with training in management skills in an SBOE approved program. (TEC 13.353)
8. Provide administrators and others who supervise teachers an SBOE approved training program in order to become a certified appraiser. (TEC 13.301)
9. Maintain a pupil-teacher ratio of not more than 20/1 as a district-wide average. (TEC 16.054a)
10. Maintain a pupil-teacher ratio of not more than 22/1 in kindergarten, first, and second grades from the 1986–87 school year on and in grades three and four beginning in 1988–89. (TEC 16.054b)
11. Employ teachers and other professionals who are certified by the TEA. (TEC 13.045)
12. Assign teachers to teach only those courses for which they meet the preparation requirements established by the SBOE. (TAC 97.117)
13. Have an evaluation system that provides periodic written evaluations of full-time, certified, professional employees, as defined in Education Code 21.202 (1) and/or as classified in Education Code 16.056, at annual or more frequent intervals. (TEC 21.201(l), 21.202, and TAC 149.41a)
14. Adopt policies specifying the duties of each of its professional and paraprofessional positions of employment. (TEC 21.912, TAC 121.1)
15. Establish a comprehensive system of personnel development that includes development of a plan to meet identified personnel training needs for education of the handicapped. (TAC 89.226b)

2. Preservation of Community of Interest

The State has also asserted that the existing System of Public School Finance based on the existing districts is justified by notions of preservation of community of interest. This justification is not embodied in statute or Constitution.

The Court, based on the following fact findings, concludes that the claim of preservation of community of interest is insufficient to justify the discrimination found in the State's system of funding public education.

1. No particular community of interest is served by the crazy quilt scheme that characterizes many of the school district lines in Texas. (PX 1, Moak, Collins)
2. School district boundaries frequently cross city and county boundaries in a random and inexplicable fashion. (PX 1)
3. In many instances it appears that district lines actually fragment communities of interest, e.g., in El Paso County, the Ysleta District is broken into three non-contiguous parts and the extremely wealthy Whiteface District is in three Texas counties, with parts of

its portions seemingly unconnected. A review of the school district maps of Texas reveals numerous instances of similar fragmentations. (PX 1)

4. Some school districts are nothing more than tax havens. (Hooker, Collins, Moak)

E. Conclusions

1. Public School education is a fundamental interest under the Texas Constitution.
2. In order to determine the constitutionality of the Texas System of funding public education, it is necessary to examine the system in its entirety including both State funding formulas as well as local district configurations and the wealth of those districts and how these factors interact to create the State system of funding public education.
3. Education in Texas is by Constitution and statute a function of the State Government and school districts are mere creatures of the State, established by the State for its convenience in discharging its responsibility to establish and maintain a system of free public education. *Lee vs. Leonard I.S.D.*, 24 S.W.2d 449 (Tex. Civ. App.—Texarkana 1930, writ ref'd).
4. The wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed upon local property taxes in the funding of Texas public education, these disparities in property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor school districts with the result that children in the property poor school districts suffer a denial of equal educational opportunity and are the victims of discrimination in the allocation of education dollars. Thus, the fundamental right to equal educational opportunity is impinged upon by the funding scheme created and maintained by the State of Texas, a scheme which classifies students on the basis of the wealth of the district in which they reside. I conclude that the existing State funding system for public education is in violation of the Equal Protection guarantee of Article 1, Section 3 of the Texas Constitution. In this connection, I note that the United States Supreme Court would have reached a similar conclusion under the United States Constitution had it determined that education was a fundamental right under the federal constitution: "We must decide, first, whether the Texas system of financing public education. . . impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. If so, the judgment of the district court should be affirmed." *San Antonio I.S.D. vs. Rodriguez*, 93 S.Ct. at 1288.
5. The Court does not detect in the evidence or the law a compelling reason or objective that would justify continuation of this discrimination.
6. It has been maintained by the state with evidence and argument that there is not a direct relation between educational expenditures and learning by students as reflected on academic tests such as the TEAMS tests used in this state. This Court, however, does not sit to resolve disputes over educational theory but to enforce our constitution. If one district has more access to funds than another district, the wealthier one will have the best ability to fulfill the needs of its students. The question of discrimination in educational quality must be deemed to be an objective one that looks to what the state provides its children and their school districts, not what the students or the districts are able to do with what they receive. (Mr. Justice Marshall's thoughts, *Rodriguez*, 93 S.Ct. 1278, 1322).
7. The facts I have recited and found indicate that our financial system, which includes the combination of state and local funds as they currently act in tandem, do not yet meet the requirements of our constitution.
8. With all due respect to history and to the legislature for its recent generous and thoughtful efforts to rectify this situation, by order of this Court the current system will be set aside.
9. In order to cure this Constitutional infirmity, a system for funding public education must be adopted that either eliminates or fully compensates for disparities in local district wealth. This standard requires that the quality of public education may not be a function of disparate local district wealth. The State's financing system must insure equality of access to funds.

III. There is no rational or substantially justified basis for the present Texas school finance system

A. Legal Standards

1. The two principal Texas cases applying the rational basis test are *Sullivan vs. University Interscholastic League*, 616 S.W. 2d 170 (Tex. 1981); and *Whitworth vs. Bynum*, 699 S.W.2d 984 (Tex. 1985). In both instances the Texas Supreme Court invalidated State regulations, in the first instance a rule prohibiting transfer players from participating in U.I.L. sponsored athletics and in the second case the Texas Guest Statute, a statute that had been held constitutional by earlier Texas decisions.
2. Where a State classification causes an adverse discriminatory impact but does not impinge on a fundamental right the State must demonstrate that its classification is rationally related to a legitimate state purpose. *Whitworth, supra; Sullivan, supra.*
3. The rational basis analysis requires that "similarly situated individuals must be treated equally under the statutory classification unless there's a rational basis for not doing so" and "even when the purpose of a statute is legitimate, equal protection analysis still requires a determination that the classifications drawn by the statute are rationally related to the statute's purpose." *Whitworth vs. Bynum*, 699 S.W.2d at 197. Is the discrimination in educational opportunities suffered by students in property poor districts rationally related to a valid State purpose?
4. To make this determination, we look to see how the State has expressed its statutory purpose and then determine whether the funding scheme is rationally related to this State purpose. *Whitworth vs. Bynum*, 699 S.W.2d 194.
5. The stated constitutional purpose, contained in Article VII, Section 1, is: "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

   The question becomes, does the random and often chaotic allocation of wealth among school districts and the resulting discrimination against students in the provision of education rationally serve the stated purposes of Article VII, Section l? Is this funding scheme rationally related to the "support and maintenance of an efficient system" of public education or to accomplish the "general diffusion of knowledge."
6. Section 16.001 of the Texas Education Code expresses the State policy to be that "provision of public education is a State responsibility and that a thorough and efficient system be provided and substantially financed through State revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors." The question becomes, does the random and often chaotic allocation of wealth among school districts and the resulting discrimination against students in the provision of education rationally serve the stated purposes of Section 16.001?
7. "School districts are but subdivisions of the state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people." *Lee vs. Leonard I.S.D.*, 24 S.W. 2d 449 (Tex. Civ. App.—Texarkana 1930, error ref'd). And "the Legislature has authority to enlarge or consolidate school districts in such a manner as it deems fit." *North Common School District vs. Live Oak County Board*, 199 S.W. 3d 764 (Tex. 1946).
8. The Texas Supreme Court in applying Article 1, Section 3 of the Texas Constitution does not consider itself bound by decisions of the United States Supreme Court under the Fourteenth Amendment and the Texas courts are "free to accept or reject federal holdings" in formulating a body of law under the State's own Constitution. *Whitworth vs. Bynum*, 699 S.W. 2d at 196.
9. The Court must consider whether a statute is over-broad, over-inclusive or harsh when considering its constitutionality under the rational basis standard. *Sullivan vs. University*

Scholastic League, 616 S.W. 2d 170 (Tex. 1981); *Whitworth vs. Bynum*, 699 S.W. 2d 194 (Tex. 1985)

10. In *Plylar vs. Doe*, 457 U.S. 202 (1982), the Supreme Court struck down Sec. 21.031 of the Texas Education Code which effectively barred undocumented children from Texas schools. While noting that education was not a fundamental interest under the Fourteenth Amendment, the Court held that a confluence of factors, including the implication of educational interest, compelled the state to show it had a "substantial" interest in its scheme. *Id.* at 231. Among the factors weighed in raising the level of justification of the state was the existence of innocent children who were burdened, as well as a nexus between those children and traditionally suspect classes, alienage and race.

B. The Defendants' Obligations

The State must demonstrate that its system of school finance is rationally related to a legitimate state purpose.

C. Facts Demonstrating That the Texas System of Funding public Education Does Have an Adverse Impact and Impinges Upon the Educational opportunities Afforded Children

The Court has listed its findings on this issues in Section II, supra.

D. Findings of Fact Demonstrating That the Existing System of Funding Public Education Is Not Rationally Related to the Purposes Expressed by Article 7, Section L of the Texas Constitution and/or Section 16.001 of the Texas Education Code

The Court has listed its findings on this issue in Section II, supra and Section IV infra.

E. Facts Demonstrating That the Adverse Impact Found to Exist as a Result of the State System of Public School Finance Is Not Justified by Local Control or Preservation of Community of Interest

The Court has listed its findings on this issue in Section II, supra and Section IV, infra.

F. Legal Conclusion

The system of public school finance in Texas creates and enforces classifications which have an adverse impact on Plaintiffs. The system is not rationally related to legitimate state purposes and violates Article I §§3 and 3(a) of the Texas Constitution.

IV. The Texas school finance system is not an efficient system

Plaintiffs and Plaintiff-Intervenors further contend that the Texas system for funding public education violates Article VII, Section 1 of the Texas Constitution.

A. Legal Standards

1. The Texas Constitution provides in Article VII, Section 1:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

2. The word efficient as defined in Webster's New Collegiate Dictionary means "productive without waste."
3. The Oxford American Directory defines efficient as "acting effectively; producing results with little waste of effort."
4. The West Virginia Supreme Court has defined a thorough and efficient education as one that:

develops, as best the state of education expertise allows, the minds, bodies, and social morality of its charges to prepare them for useful and happy occupation, recreation and citizenship, and does so economically.

Legal recognized elements in this definition are development in every child to his or her capacity of (1) literacy; (2) ability to add, subtract, multiply and divide numbers; (3) knowledge of Government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance;

(4) self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work—to know his or her options; (5) work-training and advanced academic training as the child may intelligently choose; (6) recreational pursuits; (7) interests in all creative arts, such as music, theater, literature, and the visual arts; (8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society. Implicit are supportive services: (1) good physical facilities, instructional materials and personnel; (2) careful state and local supervision to prevent waste and to monitor pupil, teacher and administrative competency. *Pauley vs. Kelly,* 255 S.E. 2d 859 (W.Va. 1979).

5. The West Virginia Education Article, W.VA. CONST. Art. XII §l states:

   The legislature shall provide, by general law, for a thorough and efficient system of free schools.

   Based on this Article, the West Virginia Supreme Court held:

   > the Thorough and Efficient Clause requires the development of certain high quality educational standards, and it is in part by these quality standards that the existing educational system must be tested. *Pauley vs. Kelly,* 225 S.E. 2d 859, 878 (W.Va. 1979).

6. Based upon their respective "thorough and efficient" clauses, the Supreme Courts of Arkansas, *Dupree vs. Alma School District No. 30,* 651 S.W. 2d 90 (1983); New Jersey, *Robinson vs. Cahill,* 303 A.2d 272 (N.J. 1973); and Wyoming, *Washakie County School District No. 1 vs. Herschler,* 606 P.2d 310 (Wyoming 1980) found their respective school finance systems unconstitutional.

B. The State's Requirement in View of the Law

Article VII, Section 1 of the Texas Constitution requires the State to maintain a cost-efficient/non-wasteful system of public free schools.

C. Facts Demonstrating That the Texas School Finance System Does Not Meet Its Obligations Under TEX. CONST. Art. 7, §1

The Court has made its findings on this issue in Section II, *supra* and in addition finds as follows:

1. The school district configurations in Texas, harboring as they do vast disparities in wealth among the districts, are neither efficient nor equitable and result in significantly different educational opportunities for children and widely varying tax burdens for taxpayers. (Hooker, Walker, Foster)
2. There is no underlying rationale in the district boundaries of many school districts in Texas and there are many districts that are pure tax havens. (Hooker, Walker, Foster, Moak)
3. There are tax haven districts with very few students that shelter substantial property wealth that could and should be used as a tax base to support public education. (Foster, Walker, PX 1)
4. The system is not financially efficient. (Foster, Hooker)
5. If district organizational lines were reorganized the financial efficiency of the system could be greatly increased. (Moak, Hooker)
6. Those individuals of political influence who could impact the political process by and large reside in districts of above average wealth. (Ward, Hooker, Foster)
7. The advantage of wealth and influence are enjoyed by the wealthy districts while the poor districts must survive with greatly limited resources and little or no means to improve their situation. (Ward, Boyd, Sawyer, Sybert, Hooker)
8. There are school districts operating within the State of Texas with full accreditation privileges and recognized by the Texas Education Agency and the State of Texas for all purposes with as few as four students. (Bergin)
9. State monies are channeled to "tax haven districts" either via the current funding formula

or through the manner in which the State chooses to disburse monies from the Available School Fund. (Hooker, Foster, Collins, Moak)

10. The State of Texas has allowed many small districts to exist which because of diseconomies of scale are inefficient. Many of these small districts are also property poor. (Kirby, Hooker, Moak, PX 239)
11. Regardless of size some districts are inefficient because of lack of wealth which prevents them from providing a fully adequate educational program. (Hooker, Boyd, PX 239)
12. The existing funding system creates "budget balanced districts" whose total property wealth is not available for the funding of public education; at average tax rates this loss to public education exceeds $200,000,000 annually. (Foster, PX 110)
13. Geographic anomalies exist in the pattern of district lines that result in unnecessary transportation costs and other inefficiencies; the Governor's committee, appointed by Gov. Connally, in 1965, recommended that for purposes of efficiency and equity in distribution of funds, the legislature should pursue consolidation of inefficient districts. No legislative action has ever been taken on this recommendation. (Hooker, Moak, PX 239)
14. ~~If one takes into account district lines no one could argue that the system was financially efficient and~~ [strikeout by Harley Clark] If district organizational lines were reorganized financial efficiency of the system could be greatly increased. (Moak, PX 239)
15. By taxing from larger areas of the state, the state could create and use for taxing purposes areas of similar property values for students. This would greatly reduce the existing large variations in expenditures per pupil, tax rates, inefficiency of many small districts and loss to budget-balance of other very wealthy districts. (Hooker, Moak, Ward)

D. Legal Conclusion

The system of public school finance in Texas is not an efficient system and violates the Legislature's duty required by Art. 7, §1 of the Texas Constitution.

V. Attorneys' fees claims

[Extensive text omitted by author]

D. Legal Conclusions

1. An award of attorneys fees to Plaintiffs and Plaintiff-Intervenors against both the Defendants and the Defendant-Intervenors is barred by the doctrine of sovereign immunity.
2. In addition, the Court holds that an award of attorneys fees against Defendant-Intervenors would be neither equitable nor just under the terms of the Declaratory Judgment Act, TEX. CIV. PRAC. & REM. Code §37.009, and that even if Plaintiffs had prevailed under TEX. CIV. PRAC. & REM. Code §§106.011-003, the Court would decline to exercise its discretion to award fees against Defendant-Intervenors under TEX. CIV. PRAC. & REM. Code §106.002.
3. Were it not for the doctrine of sovereign immunity the Court would enter Judgement against Defendants for Plaintiffs and Plaintiff-Intervenors' attorneys fees and costs.

VI. Remedy

A. Declaratory Judgment

Plaintiffs and Plaintiff-Intervenors are entitled to a Declaratory Judgment that the Texas School Financing System (Texas Education Code §§16.01, *et seq.*, implemented in conjunction with school district boundaries that contain unequal taxable property wealth for the financing of public education) violates the Texas Constitution, Art. 1 §3 and Art. 7 §1; as provided for in Tex. Civ. Prac. & Rem. Code §§37.001 *et seq.*

B. Injunctive Relief

1. Plaintiffs and Plaintiff-Intervenors will suffer irreparable harm if Defendants are not enjoined from continuing to enforce the present Texas School Financing System (Texas Education Code §16.01 *et seq.*, implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education).

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2. Plaintiff and Plaintiff-Intervenors have an inadequate remedy at law, making injunctive relief appropriate.
3. The Court has balanced the equities, considering the importance of education and the constitutional rights protected by this Court's Judgment and the interests of Defendants and finds that the balance of equities favors the granting and staying of injunctive relief as ordered by the Court in its June 1, 1987 Judgment.
4. The school children of Texas who do not receive an equal access to educational funds are irreparably harmed because the school districts in which they reside do not have the constitutionally guaranteed choice or ability to provide educational services and programs available to students of wealthier districts. The denial of equal educational opportunities under the present system results in a harm to school children that would be extremely difficult to calculate and allocate under the traditional law of money damages. Alternatives to an injunction could result in a multiplicity of lawsuits and unacceptable delay, all to the permanent and irreparable detriment of the educational advancement of hundreds of thousands of school children in Texas.
5. The Court orders an injunction under Tex. Civ. Prac. & Remedies Code §65.001 *et seq.*, Tex. Gov. Code §24.011 and the general equity powers of the Court, as expressed in this Court's June 1, 1987 Judgment.

VII. Conclusion

The Texas system of public school financing violates the Texas Constitution, Art. 1 §3. Art. 1 §3a. and Art. 7 §1. Plaintiffs and Plaintiff-Intervenors are entitled to declaratory and injunctive relief.

FILED AND ENTERED this ***27th*** *day of* ***August,*** *1987.*

Judge Harley Clark, *250TH DISTRICT COURT, TRAVIS COUNTY, TEXAS, August 27, 1987.*

No sooner had the April decision finding the state system of school finance unconstitutional been issued, than the entire educational and political systems of the state began focusing on remedies. The diehard high wealth school districts and their representative organizations and legislators immediately initiated a move to amend the Texas Constitution. I don't believe anybody seriously intended to remove the equal protection clause, but there was strong advocacy for a constitutional amendment which would prescribe that the Legislature's prerogatives in establishing a system of education could not be subject to judicial review. Another concept was the inclusion of a statement prescribing unlimited local enrichment, similar to what had been formulated in the proposed constitutional revision in 1974. (see Chapter 3)

The concept of remedy was not foreign to IDRA, advocates of school finance reform, or the Plaintiff school districts. Remedy through legislation had been advocated since 1973, and the same reform measures that we had been advocating were quickly brought forward. Less than a month after the court decision in *Edgewood v. Kirby,* I presented a variety of alternatives for legislative consideration.[110] The pros and cons of full state funding, funding caps, district consolidation, redistricting, unitary taxing supplements, industrial taxation and district power equalization were included in "Remedies for Finance Equity," an article I wrote and published in the May 1987 issue of the *IDRA Newsletter.* It completely contradicts subsequent claims by the educational and political leadership of Texas that advocates of school finance reform sought to destroy the educational system by massive consolidation, and that our proposed remedies would cost the state billions of additional tax dollars:

> The recent decision by the 250th District Court in Travis County declaring the Texas system of school finance unconstitutional immediately raises interest and concern over the type of remedy which may be imposed by the courts or the types of remedy enacted by the Texas Legislature.
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> Media coverage of the court decision focused on changing district boundaries as a feasible remedy for eliminating the disparities between property rich and property poor school districts. Such attention given by the media to redistricting is unfortunate since this type of remedy may be one of the least feasible responses to the problem.

It is not surprising that the media focused on district boundaries as a possible outcome of the court case. The public is more sensitive to district boundaries, existing political structures, local tax rates and local control of schools than it is to the various elements of the Texas Foundation School Program. Even school administrators overreacted to one of the findings enumerated by the court which declared that "there is no underlying rationale in the district boundaries of many school districts." However, it is my opinion that this finding is much more relevant as a legal issue than as a remedy issue. In order to hold the system of school finance unconstitutional it was necessary to find that there is no compelling state interest in the existing inequitable district system in the State of Texas.

Regardless of the type of remedy developed by the legislature, with or without strong guidelines from the court, the remedy required will have to be extensive since existing disparities are extensive. In spite of the Texas Education Agency's contention that fiscal discrepancies between poor and wealthy districts are small and that the system is equitable, the findings of the court indicate otherwise.

The 200 wealthiest school districts in Texas spent twice as much per student in 1985–86 as the 200 poorest school districts. Just this finding alone illustrates the extent of the problem. A per pupil expenditure disparity of 100 percent is not a small disparity, nor does the inclusion of 40 percent of the districts in the State in this finding indicate disparities are limited to a few districts at the extremes of the wealth continuum as indicated by the Texas Education Agency.

Wealth disparities among the school districts in Texas are huge and require extensive neutralizing. A range of $14 million per student in taxable property in the richest district to $20,000 per student in the poorest district produces a disparity ratio of 700-to-1, i.e., the richest district has a per student tax base 700 times larger than the poorest district.

Not only will the Texas response have to be extensive, but it should be immediate. The State of California found itself in a similar position in *Serrano vs. Priest* and postponed addressing the problem until the appellate process had been exhausted, only to find that the problem was exacerbated in the intervening years and millions of dollars that could have been used to fashion a remedy had been committed for other purposes.

Modification of the existing system of school finance for the State is very dependent on resources available for the implementation of the response. One can only wish that the court decision had come up at the time when Texas had surpluses of four and five billion dollars, rather than at a time when the entire State is caught up in a financial crunch. It is definitely much easier and less painful to fashion a response with additional State funds than without them.

Regardless of the scarcity of additional funds, the legislature will have to begin to address an alternative system of school finance to meet constitutional requirements as outlined by the court. The list of available options is not very extensive, although the seven basic options may be augmented by any number of combinations of two or more of these basic options.

Fortunately, the basic system of school finance in the foundation school program is equalizing in nature and will require an increase in funding and modification of enrichment funding in keeping with the court guidelines on the amount of disparity to be tolerated by the courts.

The big problem will be what to do about the local enrichment which is not currently equalized and leads to per pupil expenditures two times greater in rich districts than in property poor districts.

The following are the basic options currently available to the Texas Legislature. Other options may surface as the legislature, the courts and participants in the litigation address the problem in the months ahead.

Full State Funding

Intrastate disparities in educational opportunities inevitably arise when local funding exceeds the state's share of the cost of education. As the disparities in funding available to school districts are exacerbated by disparities in local wealth, a simple remedy for the problem would be to eliminate the local share of the cost of education. This would mean that all educational funding would come from the State with no local funding permitted.

Such a remedy is so simplistic and impractical that it should receive no serious consideration in the courts or the legislature.

Organizationally, the elimination of local funds would lead to a diminishing of local control of education. Although school districts at the lower end of the wealth spectrum argue that they now have little control over education, having little local wealth to contribute to the effort, the ideal solution is to increase the amount of funding which can be generated by low wealth district efforts and thereby increase local control for low wealth districts rather than to diminish local control for everyone.

A much more practical consideration in rejecting full state funding is that local funds make up one-half of the funds being expended for education in Texas. The elimination of local revenues would mean a doubling of State expenditures if the level of current effort is to be maintained. Considering that the State of Texas is having trouble maintaining its share of the cost of education, the concept of the State providing an additional $5 billion is not realistic.

The only way that the State could adopt full State funding is by collecting at the State level all property taxes now being collected by local school districts and distributing these funds on an equitable basis. This action is prohibited by the State Constitution and would require a constitutional amendment to implement.

Perhaps the worst aspect of full state funding is the establishment of maximum levels of education which could not be exceeded at local cost and initiative. Plaintiffs and Plaintiff-Intervenors are adamant in their contention that the purpose of the court case is to achieve equity in the amount of funding available to schools and not to constrain the level of education which can be attained.

Funding Caps

A second alternative to the present system of school finance is to place a cap on the amount of "enrichment" money which a school district can expend over and above the equalization available in the foundation school program. The basic foundation school program, although significantly underfunded, is generally equalizing in that the local share of the guaranteed minimum program is determined by the wealth of the local school district. School districts may exceed the limits of the foundation program with the State guaranteeing that similar additional effort by all school districts would result in similar funds being generated, with the State making up the difference up to a determined level.

Assuming that the amount of guaranteed yield is sufficient, the legislature can place a limit on the amount which can supplement the foundation program, thereby eliminating the disequalizing effects of unlimited local taxing power. To a large extent such a cap already exists in terms of maximum tax rates which can be levied and bonded indebtedness which can be assumed; however, the cap constrains only the poor school districts where the maximum tax rate generates a small amount of funds. In the poorest school district the $2.00 per $100 appraised valuation can produce $400 per student; in the wealthiest district the existing cap can produce $280,000 in enrichment funding per student.

Arguments against spending caps parallel some arguments against full state funding of education, namely the undesirability of placing a maximum on the quality of education and the reduction of local initiative and control.

The need for an equitable system of school finance and the inability of the State to guarantee yields on an unlimited amount of enrichment may require the establishment of some form of a cap in combination with other forms of remedy.

District Consolidation

Although much of the media coverage of *Edgewood vs. Kirby* focused on the consolidation of school districts as a possible remedy, it is not conceivable that it will receive any serious consideration by the legislature.

The number of school districts in Texas has diminished consistently since the enactment of the foundation school program in 1949. In 1950, there were some 6,000 school districts in Texas. The elimination of dormant school districts and incentives for consolidation have reduced the number considerably. At the time of the *Rodriguez* decision (1971) there were 1,600 school districts. At present, there are 1,063 districts in Texas.

Although there are still some school districts which serve as tax havens and a number of small, inefficient districts (the median size of a school district in Texas is about 500 students, with many as small as 10 or 20 students), both of which should be eliminated, consolidation of school districts is not a feasible statewide response.

Proponents of school district consolidation have long contended that the combination of school districts will not only provide equity and efficiency, but will also result in substantial savings through the elimination of duplicated services. None of these assumptions has proved to be correct.

Bexar County, Texas, serves as an example of a proliferation of school districts which could be consolidated. There are 12 independent school districts in the county (plus three "military" districts without a tax base). The size of these districts varies from a low of slightly over 3,000 students to close to 60,000 students in the largest. None of the districts is too small to be inefficient, and each is able to offer a wide array of educational services. Of the 12 school districts, only two have tax bases above the State average, neither so high as to be classified among the "wealthy" school districts in Texas. The wealthiest of the 12, Alamo Heights, is also the smallest with slightly more than 3,000 students.

The consolidation of all these school districts would produce one large property poor school district with a low tax base, high taxes and a low yield, the very characteristics which the court case is supposed to eliminate. As stated by my old school finance professor, "The consolidation of poverty with poverty produces nothing but poverty."

On the other hand, the merger would result in a large, bureaucratic school district with some 250,000 students which would immediately start to seek ways in which it could decentralize in order to be more responsive to the unique needs of the various segments of the community. With the exception of very small school districts which cannot afford a wide array of subject matter offerings with subject matter specialists, largeness in school districts appears to be a liability rather than an asset. Certainly the continuous efforts of the nation's large school districts to find ways to decentralize and be flexible for community interests would indicate so.

The extent to which a community is supportive of its school system and is willing to tax itself as a measure of this support is a function of the distance between the community and decision making by the district board and administration. The creation of school districts with a quarter of a million students governed by some seven board members is not conducive to a close relationship with the community and should prove to be too high a price to pay for the limited equalization which it would provide.

Research in school finance indicates that the creation of a large school district does not result in significant savings in administrative costs. The need for a large bureaucratic administrative structure to operate the large district results in increased costs rather than savings. The elimination of a dozen school district superintendents would demand the creation of a dozen new positions in the new system at a similar cost.

Redistricting

A similar approach to district consolidation could be the creation of entirely new districts in the State of Texas.

This approach would differ from consolidation in that the rationale of new district boundaries would be equalization of tax bases. Such equalization, at least to some degree, would be achieved by the gerrymandering of new district lines in order to obtain more equitable tax bases in the resulting new districts.

This approach has been used extensively by the Department of Justice in order to guarantee minority voting rights in local and state single member districts. The only distinction in this case is that the necessary gerrymandering would be aimed at guaranteeing the constitutional right to equal access to funds in support of the schools.

As is the case in district consolidation, the various segments of the State are so different in wealth that the creation of 1,000 new districts would do little to diminish the 700-to-1 ratio of wealth disparity in the existing system. In order to neutralize geographic wealth differences, it would be necessary to establish a much smaller number of districts than the 1,000 in existence today. Evidence presented in the Edgewood trial indicates that a reduction in the number of districts from 1,063 to 20 would produce a proportionate reduction in wealth disparities from 700-to-1 to a much more manageable ratio of 9-to-1. The remaining disparity would then be further neutralized by differences in the State share of the foundation school program.

Needless to say, the creation of a new system with 20 school districts, each having some 150,000 students, presents some of the same problems characteristic of the district consolidation remedy. The problem would be most acute in population-sparse areas such as West Texas where a grouping of 150,000 students would encompass a huge geographic area.

Redistricting would still be a feasible approach if the number of school districts created would be much greater than 20, with the understanding that the larger the number of districts, the larger the resulting fiscal disparity among the districts, and the greater the State effort to neutralize these disparities. It would be a simple statistical task to conduct a simulation of district redistricting, using the number of students as a variable, and to produce estimates of the cost to the State to neutralize fiscal disparities among the resulting number of school districts.

Changes in district boundaries, through either consolidation or redistricting, will require accompanying legislation for the collection of funds from former districts in order to retire bonded indebtedness and honor other obligations and contractual commitments existing prior to the changes in boundaries.

Unitary Taxing Supplements

Another potential remedy which surfaced during the Edgewood trial was the retention of existing school districts and the existing foundation school program, but with enrichment funds raised through supplemental, large taxing districts on a regional basis that would reduce wealth disparities. The smaller disparities would then be addressed by a State equalization program.

Using the existing Regional Education Service Center structure, for example, would create 20 unitary taxing districts with an average of 50 school districts in each. As stated previously, the wealth disparities among these 20 taxing entities would be approximately 9-to-1, a much more manageable disparity than under the existing system.

The biggest problem with such an approach would be the governance of the new entities. Education Service Centers in Texas have suffered from this problem since their creation. The Centers are governed by a board made up of one representative from each of the participating school districts. As a result, large urban districts are consistently underrepresented and governed by the proliferation of small, mostly rural districts in each of the regions. An often heard complaint is that as a result of this unequal representation, service centers are insensitive to the needs of large, urban school districts which usually have the largest number and percentage of students with special needs.

State Industrial Taxation

Since the early 1970s when California was seeking revenues for the equalization of district funding as a response to *Serrano,* consideration has been given to a remedy which diminishes school district wealth differences while at the same time increasing state revenues which could be used for equalization of the remaining differences. Such a remedy in Texas would consist of the elimination of large industrial taxable property from the tax rolls of school districts and the collection of this property tax by the State.

Since disparities in taxable wealth are frequently attributed to the accident of industrial location, such a remedy would be feasible. The Texas constitutional prohibition against a statewide property tax would require a modification of this concept, with the taxes on industrial property collected and distributed on a regional basis, or the passage of a constitutional amendment.

District Power Equalization

By far the most feasible response to the court findings in *Edgewood vs. Kirby* is a State program of district power equalization. In such a program the differences in district wealth would be neutralized by State guaranteed yields. In its simplest form, all districts would collect taxes at a set tax rate with the existing differences in yield made up with State funds.

Flexibility and local initiative can be provided by the creation of several guaranteed tax levels, or the establishment of a sliding scale. In the former, a school district would select from two or three options the level at which it wishes to tax itself with the State guaranteeing the yield for each of the optional levels. In a more flexible sliding scale, the local school district would select a tax rate from a wide range with increments as small as 1 cent, and the State would guarantee a set yield for the selected local tax rate.

The existing enrichment provision as enacted in House Bill 72 in 1984 has such a guaranteed yield, although the amount guaranteed is very limited.

Two large problems will be encountered in the enactment of such a remedy: the large disparities in taxable wealth among the 1,063 districts in the State, and the unavailability of State funds to match an extensive local enrichment effort.

Since a $1.00 tax effort in the wealthiest school district in Texas would produce a tax yield of $140,000, it is inconceivable that the State would be unable to guarantee such a yield for all school districts in Texas. This would require the establishment of a cap on enrichment funds, limiting the amount by which a school district may augment the foundation program to the amount which the State is able to equalize with a guaranteed yield.

If the Texas Legislature had addressed the problem of school finance equity prior to being ordered by the court, it is probable that the issue of disparities caused by extremely wealthy school districts could have been disregarded simply by limiting equalization efforts to the bulk of the school districts, and exempt some 5% of the districts as being just too wealthy for effective equalization. Such a decision today will have to test the constitutional tolerance which the court will allow. Should court guidelines include all school districts in an equalization program, the legislature will have no choice but to impose caps on enrichment.

The second problem concerns the poor financial situation of the State of Texas. The enactment of school finance equity when Texas was enjoying four and five billion dollar surpluses would have allowed extensive equity measures with little demands on low tax school districts and with a maximum of "upward equalization."

Increased district power equalization without an additional State contribution will entail a curtailment of State aid to the wealthier school districts. Although such a response appears fair and just, the political reality is that there are three large school districts which have sufficient wealth to be above the State average and would have to assume a greater portion of the total cost of education—Houston, Dallas and Austin. The combined legislative clout of two, or all three, of these school districts will certainly be felt as the legislature selects an appropriate response to the *Edgewood* finance case.

Lawyers from the Dallas area were very evident in the trial. Few witnesses concluded their testimony or cross-examination without having to respond to the inevitable question, "How do you think the taxpayers in Dallas are going to feel if their taxes are raised?" (Mercifully, the question was not asked of Alan Boyd, superintendent of San Elizario which had a tax rate last year of $1.98 per $100 of appraised valuation.)

School Facilities

It was inevitable that the court would include the failure of the State of Texas to provide funds for school land, facilities and equipment in its findings.

Texas is one of a handful of states that fails to provide some form of assistance in this area. Addressing this failure in Texas is long overdue, not only because of the question of equity, but because most other states have come to the realization that the local property tax can no longer support the cost of school facilities, even in middle and above average wealth school districts.

The cost of facilities has skyrocketed. School building features for the handicapped, special populations and special programs have similarly increased the cost of school construction in excess of local property tax yields. The school tax competes with a proliferation of new taxing entities such as rival authorities, health districts, soil conservation districts, community colleges, higher education authorities, and the development of utilities. City and county governments depend on the property tax to meet an increased demand for police and fire protection as well as public housing, welfare, rehabilitation, incarceration, literacy and the arts, to name just a few. It is not surprising that the "taxpayers revolt" has focused on the commonly excessive, and always regressive, local property tax.

The inclusion of the cost of facilities in a court order demanding school finance equity will probably provide much needed relief from the local dependence on the property tax, with state taxes, which have a much broader base assuming a bigger responsibility.

Other states provide assistance to the local districts for the cost of facilities by its inclusion in the foundation school program, special grants-in-aid, categorical funding, no-cost and low-interest loans and other types of assistance to provide relief for the local property tax.

Constitutional Amendments

Since the system of school finance has been declared unconstitutional, one simplistic response would be to amend the State Constitution in order to institutionalize the existing system. Such an approach would create even greater problems than the inequitable system of school finance now in existence in the State.

First, the amending of the Constitution is a difficult and lengthy process. Fifty-one votes in the House would be sufficient to block the legislature's request for a constitutional amendment. The amendment would also have to be passed by the State's electorate.

Second, it is detrimental to curtail the equal protection clause by exempting education from this constitutional guarantee. If every piece of legislation that violates the civil rights of citizens of the State were to be institutionalized by exempting that right from the constitutional protection, the resulting loss of liberty and equality would make this State a difficult place in which to live.

To me, it is inconceivable that even the richest school districts which wish to perpetuate their preferential status under the present system of school finance would resort to a curtailment of equal protection to achieve this purpose, and even less conceivable that the people of the State of Texas would grant them this privileged status at the expense of others.

Third, the granting of constitutional status to the present inequitable system of school finance would cost all school districts an exorbitant price which they would subsequently find excessive. Once given constitutional status to the present system it would require additional amendments to the Constitution in order to modify the most trivial elements in the system. The thought of having to go to the entire electorate in order to increase or decrease the amount of funding, make changes in categorical weights, amend the price differential index, or, heaven forbid, provide an increase in teacher salaries, makes the granting of constitutional status to the present system a terrifying prospect.

Conclusion

A variety of alternatives are available for the State's development of a response to the court finding the Texas system of school finance unconstitutional. The various alternatives differ as to the political feasibility for legislative enactment, the extent to which they neutralize existing geographic wealth differences, the practicality of administering the response, and the demand made on additional State funds. Advantages and disadvantages of the various remedies will require modification of the

> system of school finance incorporating at least two, and possibly more, of the available remedies, or perhaps others not yet considered.

The threat of change and the elimination of the elitist system of education in the state proved too much for the Texas Education Agency. The ink was not dry on Judge Clark's decision before Commissioner William Kirby announced that the Agency would appeal the decision. In August 1987, Defendants filed in the Texas Court of Appeals.

Some time after the appeal had been filed, I asked several members of the State Board of Education about the level of support on the board for the appeal. I was surprised to hear from them that the issue was never addressed by the board. According to the state board members, Commissioner Kirby and TEA legal counsel filed the appeal without authorization from the state board. It would seem to me that the policy-making body would have made the decision to appeal, rather than the professional staff of the central education agency.

On appeal, TEA resurrected the same arguments used in fighting against school finance equity. According to TEA, the amount of enrichment equalization provided in HB 72 was the exact amount necessary and desired, in spite of TEA having made the same judgement 20 years earlier when there was no enrichment equalization. In the appeal, TEA similarly reverted to the argument used in the court case that inequities in the amount of money available to school districts of different wealth are irrelevant because money does not make a difference in the quality of educational services provided.

In September 1987, I wrote the following article attacking the TEA position during trial and presented again by TEA during the legislative remedy phase, that educational expenditures were not related to quality of education:

> **Financial Resources and Educational Outcomes: Does Money Make a Difference?**[111]
> Subsequent to the Travis County district court ruling which declared the Texas system of school finance unconstitutional, IDRA received an anonymous letter containing copies of two articles which appeared in a Dallas newspaper reporting testimony presented in the court case. The two articles cite testimony presented by two high-level administrators from the Texas Education Agency (TEA).
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> The side-by-side layout of the two articles display an interesting contradiction in school finance testimony presented by the Texas Education Agency in the *Edgewood vs. Kirby* court case.
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> One TEA official informed the court that the present system of school finance in the State of Texas does not discriminate against children in low wealth school districts. The lack of discrimination is not based on the fact that low wealth school districts do not receive less money than high wealth school districts, but rather on the assumption that more money does not necessarily assure a better school system. The TEA official further asserted that all of the state's school districts receive enough state money to maintain a basic curriculum.
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> On the other hand, another official from the Texas Education Agency testified before the same court on the following day that he would be opposed to a plan which would redistribute state money, taking some $600 million dollars from wealthy school districts and giving it to property poor districts. He also opposes placing a limit on how much additional local funds can be spent on schools.
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> The obvious contradiction in the testimony presented by the two TEA officials gives rise to the question, "If money does not make any difference, why the opposition to its equitable redistribution?" For that matter, if money does not make any difference, why are the 48 intervening high wealth school districts so reluctant to part with it? If money does not make any difference, why not protect the taxpayers' interests by placing a cap on the amount of money which can be expended over and above the maintenance of a basic curriculum?
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> Judge Harley Clark of the 250th Travis County District Court who rendered the decision finding the present system of school finance in Texas unconstitutional makes the questions raised above moot by citing the same arguments presented by Supreme Court Justice Thurgood Marshall in *Rodriguez vs. San Antonio ISD,* the federal court case which referred Plaintiffs to the state government in seeking redress from the obviously inequitable state system.
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> "It has been maintained by the state with evidence and argument that there is not a direct rela-

tion between educational expenditures and learning by students as reflected on academic tests such as the TEAMS tests used in this state. This Court, however, does not sit to resolve disputes over educational theory but to enforce our constitution. If one district has more access to funds than another district, the wealthier one will have the best ability to fulfill the needs of its students. The question of discrimination in educational quality must be deemed to be an objective one that looks to what the state provides its children and their school districts, not what the students or the districts are able to do with what they receive."

Although Judge Clark is to be applauded for making this distinction between allocation of resources and educational outcomes, the failure to demonstrate a distinction in outcomes based on the amount of money expended for education continues to be of great interest to educators.

In 1966 James Coleman's analysis of schools showed that differences in resources allocated to schools accounted for only a small part of differences in school test scores. In 1973 Christopher Jencks concluded that variations in performance were caused by forces outside the school rather than by school resources.

The failure to identify educational outcomes proportionate to educational investment lies in what educational outcomes were analyzed. The studies by Coleman and Jencks, as well as testimony presented by TEA to the court in *Edgewood vs. Kirby* all focused on standardized test scores as the sole measure of educational outcomes, which is a narrow and limited perception of the purposes and goals of the schools.

As will be discussed later, the use of TEAMS test data to determine educational outcomes is even more ridiculous. An analysis of input/output relationships must go beyond standardized test scores to demonstrate that indeed money does make a difference.

Input Measures

During the trial and appeal of *Rodriguez,* the defendant State of Texas and the wealthy school districts of the state argued that additional local funds readily available in high wealth districts did not accrue any benefits to the districts expending these additional funds. For the most part, the districts argued, the additional funds were expended for the development of instructional materials and programs which were subsequently made available to less wealthy districts at no expense. Therefore, wealthy school districts, under great financial sacrifice, played an altruistic role in the improvement of educational opportunities for all children.

Studies conducted subsequent to *Rodriguez* indicated that few, if any, locally raised dollars over and above the state foundation school program were expended in the development of instructional materials or programs subsequently made available to low wealth school districts. For the most part, supplemental funds were expended to maintain a higher salary schedule and for the employment of additional teacher units in support of a lower pupil-teacher ratio.

Early in its formative years, IDRA's research efforts demonstrated not only that the expenditure of supplementary local funds in high wealth districts was mostly for personnel, but that the high wealth school districts were successful in acquiring superior teachers, since a positive correlation existed between taxable wealth and teacher salaries, years of experience of professional staff, and the professional training of teachers.

Studies conducted by the San Antonio League of Women Voters showed conclusively that local wealth was used for the offering of instructional programs over and above what could be supported by the foundation school program and did not identify any inter-district transferability of those programs. The number and variety of instructional programs was related to the wealth of the school district.

The perpetuation of discrimination in program offerings was evident in testimony presented by low wealth school district administrators in *Edgewood vs. Kirby.* In some school districts even basic subjects are not being offered or are offered sporadically rather than on a regular basis. Testimony by Allen Boyd, superintendent of the impoverished San Elizario Independent School District, presented a dismal picture of a high school where physics and chemistry were not offered, algebra and geometry were offered only in alternating years, and foreign languages, music, and interscholastic activities were not a part of the school program.

Similar resource disparities exist in the availability of libraries and library books, materials and supplies, equipment and school facilities. Even if the differential in resource availability did not lead to differences in student performance, much could be said about the adequacy and quality of the teaching/learning environment in high wealth districts. If nothing else, teaching and learning can be a much more pleasant experience when conducted in smaller groups, in comfortable and adequate facilities, and with an abundance of resource materials, equipment and supplies.

Output Measures

Whether the availability and allocation of additional resources makes an impact on the performance of the student requires a much more extensive analysis of outcomes than student performance on standardized tests.

The use of the TEAMS test for such a comparison is even more ridiculous. The TEAMS test is a criterion referenced test which measures the attainment of minimal competencies in two basic skill areas, language and math. A student taking the TEAMS test is measured as to whether or not he mastered a basic skill; no attempt is made to determine what else the student may know, or the attainment of skills beyond the minimal levels in the two subject matter areas included in the test. The use of the TEAMS test as a measure of the impact of financial resources on educational outcomes is analogous to using minimum height standards as a measure of the impact of nutrition on physical growth in young adults. In this case the TEAMS test would be equivalent to a minimal measurement of 4 feet, 6 inches, and since most young adults exceed this size, we would thereby conclude that nutrition is unrelated to physical growth.

The use of nationally standardized achievement tests as a determinant of educational outcomes is not much better. Although standardized achievement tests commonly include a wider array of instructional areas and a broader spectrum of performance, there is still a constraint on the quantity and quality of educational outcomes which achievement tests measure.

One only needs to look at *Bloom's Taxonomy of Educational Objectives*[112] to realize the limitations of achievement test scores as indicators of the impact of educational resources. Achievement tests tend to measure at the lower levels of the hierarchical order of the different classes of objectives, with limited attempts to measure the more complex outcomes of education. In the cognitive domain, the predominant measures are in the area of knowledge, with diminishing efforts at the measurement of comprehension and application, and an almost absolute default in the measurement of analysis, synthesis and evaluation.

The affective domain is seldom sampled in standardized achievement tests. Interests, appreciations, attitudes, values and adjustments may be the most important outcomes of education, but they are not commonly included in standardized tests.

The most important distinction between quality and non-quality teachers, and between adequate and inadequate instructional programs, is the capacity to develop the higher order learning in students. This is what additional resources purchase in high wealth school districts. To look solely at student performance in TEAMS and other standardized tests and conclude that money does not make a difference is analogous to looking solely at the gasoline consumption rates of a Honda and a Cadillac and concluding that the expenditure of extra dollars for the more expensive vehicle is unjustified since it does not lead to any differences in performance.

A hypothesis can be formulated which states that the basic allocation of funds for the foundation school program is used primarily for the development of basic educational skills. All school districts strive for the development of these skills, with differences among students in any one school district being a much stronger variable than differences among school districts. On the other hand, the allocation of supplemental financial resources goes toward the development of higher order skills not measured by standardized tests and therefore not available for objective comparison.

One way to test this hypothesis is to discard standardized test scores and look at other indicators of school performance. These alternative indicators of school performance may include the following:

Completion rates Do high wealth school districts have a higher holding ability, i.e., do more of the students stay in school through the completion of the twelfth grade and receive high school diplomas?

The Texas Dropout Survey conducted by IDRA showed an inverse relationship between district wealth and the percentage of school dropouts. The relationship is much stronger if an allowance is made for high dropout rates in relatively wealthy large urban centers with high numbers of at-risk students.

Program participation The number and types of special programs available, the number of students enrolled in such programs, and the performance of students in special programs should be used as a measure of educational outcomes. A study of such programs may include the number of students in college advanced placement classes, honors programs, programs for the gifted and talented, proportion of students in academic versus vocational tracks, participation in advanced science and math courses, student involvement in interscholastic activities, and participation in the various arts.

As indicated earlier, a study conducted by Nancy Price with the San Antonio League of Women Voters found gross discrepancies in school program offerings among school districts of varying wealth, with the high wealth school districts consistently providing the larger offerings.

Saleable skills Do students in high and low wealth school districts develop similar skills leading to similar post-school employability? Are employment and unemployment rates similar? Are there any differences in short- and long-range earnings?

Career selection Do students in high and low wealth school districts enjoy the same career opportunities? Are students from low wealth school districts underrepresented in engineering, medicine, business, high tech and law careers?

In the Edgewood school district, lead Plaintiff in *Edgewood vs. Kirby* and one of the poorest school districts in the state, it was generally recognized that through the early 1980s no graduate from any of its three high schools had ever been admitted to a medical school.

Further training Is there comparability in the number of students from low and high wealth school districts who enroll and complete post-secondary training programs, including programs in community colleges, four-year colleges and universities?

Quality of life Do students coming from low and high wealth districts have similar subsequent experiences in terms of success, satisfaction, happiness, options, mobility, and a host of other characteristics which determine the quality of life?

Answers to these questions would constitute an interesting research report, although an extensive data collection effort would have to be made since Texas schools seldom conduct follow-up studies on former students.

Considering the vast array of educational outcomes available for evaluating the impact of educational resources, it appears exceedingly simplistic to argue against school finance reform on the grounds that there is no relationship between the expenditure of money and student performance on the TEAMS test in Texas. Although little effort has been made to collect data on educational outcomes and student performance other than in standardized tests, there is an abundance of subjective evidence to substantiate school district desires for access to additional funds in support of instructional programs. Both limited objective evidence and more extensive subjective opinions do support the concept that money does make a difference.

In preparation for the *Edgewood v. Kirby* hearings in the Texas Court of Appeals, Gov. Bill Clements, Lt. Gov. Bill Hobby, and Speaker of the House Gib Lewis, in consultation with the Texas Education Agency and the attorney general's office, formed a select public education committee to publicize the potential effects of the judge's order for an equalized system of school finance.

In an April 21, 1988 article, the *Dallas Morning News*[121] reported that, "Gov. Bill Clements has said that the district judge's ruling could result in massive consolidation—possibly into as few as four or six school districts statewide—and subsequent loss of local control. Clements said Tuesday the only practical solution is a constitutional amendment that would legitimize the present system."

Texas officials and agencies then proceeded to provide massive misinformation about the potential impact of the court case. TEA's involvement in the creation and dissemination of misinformation led the Equity Center, the association of and for low tax wealth districts in Texas, to send a letter of protest to Commissioner William Kirby and State Board Chairman Jon Brumley. The Equity Center's letter took exception to the one-sided perception of the effects of the court case and the doomsday predictions being disseminated. Specific exception was taken to the following eight assertions by the Texas Education Agency and the state's select committee:

1. That the current state program is highly equalized except at the extremes of taxable wealth.

   TEA had argued this point before and during the trial. The Agency's argument was based on a graphic which they had prepared in which the wealthiest and the poorest 10 percent of the school districts had been eliminated, depicting moderate disparities in per pupil expenditures for the remaining districts. In effect, what TEA was saying was, "The extremes appear extreme because the extremes are very extreme. If you eliminate the extremes, the extremes are not so extreme."

2. That the current state program is fully adequate and provides every student the opportunity to receive a solid basic education.

   It is hard to accept that the state education agency would make this statement, yet, it formed the core of the state's defense in both the *Rodriguez* and the *Edgewood* litigation. This assertion was contradicted by TEA itself in many instances, most impressively in the undocumented children court case, *Multiple District Litigation,* in which TEA testified that the inclusion of such children in Texas schools would create an imposition due to the inadequacy of funding in the school districts that the undocumented children would enroll. (see "The Undocumented Children Case and the Ghost of Rodriguez," José A. Cárdenas, *Multicultural Education: A Generation of Advocacy*)[10]

   IDRA analysis of TEA data on student performance in the state administered minimum competency test showed a remarkable correlation between district wealth and student performance. But, the most thorough indictment of TEA's position on the adequacy of the school finance system is the "Findings of Fact and Conclusions of Law" issued by Judge Harley Clark on August 27, 1987, and presented earlier in this chapter.

3. That there is no evidence that expenditures in the current state program enhance educational achievement or performance and such expenditures should therefore not be considered in judging the constitutionality of the system.

   TEA still maintained that there is no relationship between educational expenditures and educational performance, as TEA personnel had testified at trial. (see rebuttal to this argument in this chapter)

4. That the result of the lawsuit could be a tragic and destructive "leveling-down" and "capping" of public education funding at some common denominator that would assure equalized mediocrity.

   This argument has been used repeatedly by the Texas Education Agency and high wealth school district personnel. I can readily agree to the pedagogical principle that some students require more resources than others, and I heartily endorse special programs for gifted and talented children. However, the determination of which students are marked for special services should not be based on geographic accident but rather on individual characteristics. Under no circumstances should a child receive preferential treatment at the expense of another.

It is ironic that high wealth school districts take such strong exception to similar levels of expenditures between school districts when they take great pains to assure equitable levels of expenditure within the districts. The provision of extensive amounts of funding for students in any one school at the expense of other schools within a district is just as objectionable in high wealth districts as the provision of inequitable resources between districts is objectionable to reform advocates.

"Capping" becomes a dirty word when used in reference to the high wealth districts. In truth, "capping" has been, and still is, a reality for the millions of student in low and medium wealth school districts in a state whose expenditures for education have been meager during the entire existence of the state. "Capping" is not a new term created by educational equity; "capping" is the product of a lack of public foresight and legislative neglect.

5. That the court's order cannot be satisfied unless the state's 1,062 school districts are consolidated into as few as five to 20 super districts.

TEA and high wealth districts capitalized on the fear of loss of local control when predicting the demise of local school districts as they have existed through the years. None of the school finance reform advocates have ever promoted the creation of a limited number of super districts in order to bring about financial equity. Even the creation of the 254 county education units under Plaintiffs' plan which resulted in SB 351 contained more than 10 times the number predicted by TEA, and these 254 units were created for tax collection and distribution purposes only and had absolutely no role in the operation and administration of the more than 1,000 educational units in the state.

6. That the cost of meeting the court's order would be somewhere between $11.1 billion and $149 billion compared to the current foundation school program cost of $4.8 billion.

During the entire period of school finance reform, high wealth districts argued that they were not opposed to reform, but that the effort should consist of increasing resources for low wealth districts without curtailing resources for the wealthy. Unfortunately, the level of expenditures in high wealth districts has been so high that it would take an additional investment of 10 times the amount of state funding currently being provided. Knowing that raising an additional $50 billion to equalize at the highest level was not politically feasible, it was never used as a strategy by reform advocates, nor was it ever considered by the courts. Plaintiffs and Plaintiff-Intervenors took strong exception to high wealth districts coming up with a dysfunctional response and then arguing against reform because of the unreasonable cost of their response.

7. That the courts should not interfere in school finance, because the state's program is a matter of legislative prerogative, which the legislature has and will properly exercise, as evidenced by HB 72.

It is ridiculous to assume that the legislative inadequacies in following the constitutional mandate to establish an efficient system of public schools should override basic constitutional guarantees such as equal protection. Proponents of this argument went so far as to propose a constitutional amendment that would exempt school finance legislative action (or inaction) from constitutional guarantees.

Gov. Bill Clements displayed amazing leadership ability in calling for a constitutional amendment which would make the inequitable school finance system constitutional. He saw such an amendment as the only real solution to the problem. In a statement to a Houston audience quoted in the Houston *Chronicle*,[113] Clements said, "I guarantee you your local independent school district will disappear under Judge Clark's ruling. You will be consolidated into one of six major districts that will be under control of the Texas Education Agency, a bureaucracy, and you will no longer have local control of your school district, and you will no longer elect school board members." (Houston *Chronicle*, April 19, 1988)

Rep. John Culberson from Houston took issue with the *Edgewood* decision and framed a constitutional amendment as well as filed an *Amicus Curiae* brief for the 3rd Court of Appeals. In an April 19, 1988, communication to his colleagues in the legislature, he states, "I reject Judge Clark's conclusion that he or any other judge is wiser or more competent than the legislature and the voters to decide monumental public education finance issues." Culberson goes on to justify the constitutional amendment as the only alternative to ". . . tax increases from $11 billion to as much as $149 billion at the state level . . ."

Using HB 72 as proof of legislature responsibility is inane, considering the inadequacies presented during trial and reported by Judge Clark in his "Findings of Fact and Conclusions of Law."

8. That it is ironic and somehow inappropriate that the school districts which supported HB 72 went to court to have it declared unconstitutional.

HB 72, as recommended by the Perot Select Committee, was an entirely different document than HB 72 as finally adopted. By the time that changes and amendments had been made in legislative committees, both legislative chambers, and in the compromise committee, most of the financial reforms recommended by SCOPE had been eliminated. As documented and proven at trial, disparities between high and low wealth districts were higher after the implementation of HB 72 than they had been prior to its enactment.

The Equity Center communication to the Texas Education Agency posed a question which has been raised continuously since its creation in 1950: ". . . we believe you . . . have an obligation to serve all school districts equally and to support equalized funding for all districts. We therefore do not understand why TEA is so vigorously pursuing the interests of rich districts and their students to the apparent exclusions of the interests of poor districts and their students. Is there no point of better balance between your disparate obligations?"

Neither the Texas Education Agency nor the State Attorney General have even attempted to formulate a response to this indictment.

It has been said that you can fool some of the people all of the time, you can fool all of the people some of the time, but you can't fool all of the people all of the time. This adage had little significance for the Texas political leadership. In the aftermath of *Edgewood v. Kirby,* Gov. Bill Clements came up with a plan for making all schools equitable through an educational excellence program. I responded to his plan in the following article appropriately titled, "Voodoo Finance Equity in Texas."[114]

> In December, 1988 Texas Gov. William P. Clements, Jr., issued a draft proposal of a plan for improving education in the State of Texas. The plan, *Educational Excellence Program for Texas,* establishes five policy priorities for revamping the educational system in Texas in order to impact upon the state's economic competitiveness during the next century.
>
> There are several meritorious recommendations in the Governor's plan, but the recommended funding level for the plan makes its implementation tenuous and the meeting of its objectives ludicrous.
>
> The centerpiece of the Governor's plan is the Texas Educational Excellence Award System, whereby school districts would receive cash awards based on gains in student performance.
>
> Low wealth school districts may have a problem with a program which provides resources on the basis of gains, when the major impediment to making gains is the lack of resources.
>
> Regardless of this problem with the cyclic nature of resources and performance, there is no way that the projected $30 million for this program will meet the corollary objective of bringing about fiscal neutrality in the State of Texas.
>
> The Governor states: "Rewarding schools based on gains in performance ensures that all schools can compete on an equal basis regardless of school district wealth."
>
> The El Paso ISD is a low wealth district with a tax base of only 51% of the average tax

base for school districts in Texas. In 1987–88 the district supported the local share of the foundation school program and, in addition, expended $232 per pupil in equalized enrichment. With the state contribution to the foundation school program and state equalized enrichment, it had state and local revenues of $2,630, $487 below the state average of $3,117.

For the Governor's cash reward system to bring the El Paso ISD to an equal footing with the state revenue average, it would require a reward of $487 per pupil. Multiplied by 61,800 pupils in the El Paso schools, a total of $30,096,600 would be required to bring the district up to the state average revenue. This is more than the total amount available in the Governor's recommended funding for the entire State of Texas.

Regardless of the merits of the Governor's recommendation, it obviously presents no solution for the district wealth disparities in the State of Texas.

THE TEXAS COURT OF APPEALS RULING

The Texas Court of Appeals issued a ruling in *Edgewood v. Kirby* on December 14, 1988. The appellate court reversed the district court's finding of the unconstitutionality of the state system of school finance in a 2-1 decision surprisingly reminiscent of the 1973 U.S. Supreme Court ruling in *Rodriguez*. As in *Rodriguez*, the state appellate court lamented the lack of equity in the system, but using language similar to the U.S. Supreme Court, maintained that education was not a fundamental right. MALDEF staff attorney Albert H. Kauffman, who was lead attorney in the *Edgewood* case, analyzes the appellate court decision in a February 1989 article in the *IDRA Newsletter:*[115]

> On December 14, 1988, the Third Court of Appeals in Austin, in a 2-1 decision, reversed the District Court's finding that the Texas school finance system is unconstitutional under the Texas Constitution. This decision is being appealed to the Texas Supreme Court. This article will briefly address the legal issues in the Court of Appeals' decision, the legal issues which will be presented to the Texas Supreme Court, and offer a few personal reflections on the status of this case. The author, a MALDEF staff attorney, is the lead attorney for the poor school districts in the state, Edgewood I.S.D. et al., and reflects that bias.
>
> After hearing ten weeks of testimony and reviewing hundreds of exhibits, the Trial Court held that the Texas system violates the Texas Equal Protection Clause and Texas Education Clause. The trial judge held that education is a fundamental right, wealth is a suspect classification, and there is not a compelling interest, or even a rational basis in the Texas system; furthermore, the system is not efficient. The Court of Appeals decided the Texas school finance system does not violate the equal protection clause of the Texas Constitution and does not violate the "education clause" of the Texas Constitution. In the equal protection area, the Court determined that education is not a fundamental right and wealth is not a suspect category; therefore, the case must be analyzed under the "rational basis test" of equal protection rather than under the "strict scrutiny test" of equal protection. The Court found that the "education clause" of Article VII, Sec. 1 of the Texas Constitution was not violated because the "efficiency" of the system must be determined by the legislature and not reviewed by the courts. The Court of Appeals' decision *did not* criticize any of the fact findings of the District Court or overturn any of the fact findings or analysis of the District Court.[M1] Therefore, the District Court's extensive description of the school finance system and its various inequities are the "facts of the case."

[M1] The attorney general had the option to appeal the case directly to the Texas Supreme Court rather than to the Court of Appeals, but chose not to do so. This alternative process would have led to a supreme court decision by this time. Apparently the appeal was not taken directly to the supreme court because the supreme court cannot decide fact issues. However, the state did not seriously contest any of the facts, and the Court of Appeals changed none of the facts. A year and many students' education were wasted.

The Equal Protection Claim

The Court of Appeals determined that education was not a fundamental right using the following analysis: *Rodriguez vs. San Antonio ISD* stated that fundamental rights are those that are explicitly or implicitly in the Constitution. But *Rodriguez* was a federal case talking about the federal Constitution. The State Constitution mentions education but also mentions poor houses, farms, water storage facilities, etc. Education is more important than these other matters, but is not so important as to be fundamental. Education is not as important as the matters in the Bill of Rights. But the Texas Constitution states that education is necessary for the "preservation of the liberties and rights of the people." Nevertheless, the "nexus theory" does not work because personal liberty must be specifically involved for a right to be fundamental. A layman might see this as legal mumbo jumbo or circular logic. So too might some lawyers.

It was also determined that wealth is not a suspect category in the school finance system in Texas. The *Rodriguez* case stated that, based on the record in that case, poor persons were not a sufficient "class" with a history of discrimination or sufficient definition to be a suspect category. The *Edgewood* case, however, showed that the poor are *highly* concentrated in the poor districts, that there has been a history of discrimination against the poor in education in Texas, and that the persons in poor districts are, or have been, politically powerless to make major changes in the school finance system. Based on *Rodriguez,* the Court of Appeals found that wealth is not a suspect category.

"The Rational Basis Test"

Since education is not a fundamental right and wealth is not a suspect category, the school finance system had to be interpreted under the "rational basis test" to determine whether the school finance system bares a rational relationship to a legitimate state purpose.

The Court of Appeals found that the legitimate state purpose of the present system of school finance is "local control." It also found that in the present school finance system, authorized by Article VII, Sec. 3 of the Texas Constitution, there is a rational relationship between "local control" and the present school finance system. Low-wealth districts do have less "local control," but that cannot invalidate the school finance system. On the other hand, there is very little "local control" left in the Texas public education system, and low wealth districts have no effective "local control" to expand programs, hire more teachers, etc. Nevertheless, it is not required that the school finance system be as good as possible or be a perfect system, but only that it bear some relationship to the "local control" issues. The Court of Appeals found that it did.

Based then on the public policy considerations of the importance of "local control" and on the language of Article VII, Sec. 3, the Court of Appeals found that there is a rational basis for the present school finance system. The Court of Appeals applied rules of constitutional construction and considered the intent of the framers of the Texas Constitution in 1875, who had been under Union occupation after the Civil War. At that time there was significant opposition to the expensive system of state education, and as a result, the framers wanted an inexpensive system without state control. In fact, the framers did not even allow for local school districts or local taxation. The local school district and local taxation provisions of the constitution were added in 1883, and the Court found that these changes showed a dedication to local control. On the other hand, the constitution did not require the state to create school districts or require the state to allow school districts to tax, but only allowed the legislature the discretion to create districts and allow those districts to tax. The dissent pointed out that the inequities occurred not in the structure of the constitution, but in the actions of the legislature in designing and implementing its present school finance system and relying heavily on local property wealth.

The Efficiency of the School Finance System

In majestic language, the Texas Constitution states:

A general diffusion of knowledge being essential to the preservation of the liberties and rights

> of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.
>
> The District Court found that an irrational school finance system with such vast disparities of wealth, expenditures and tax haven districts, etc. was not an efficient system. The Court of Appeals found that the "efficiency" is a political question not suitable for judicial review; therefore, the Court held that the school finance system does not violate Article VII, Sec. I of the Texas Constitution.
>
> **Some Final Comments**
>
> The Court of Appeals was critical of the equity and rationality of school finance systems. Both the majority and dissent noted the inequities of the present system but disagreed whether these inequities are subject to judicial reversal. The majority opinion noted:
>
> The system does not provide an ideal education for all students nor a completely fair distribution of tax benefits and burdens among all of the school patrons. Nevertheless, under our system of government, efforts to achieve those ideals come from the people through constitutional amendments and legislative enactments and not through judgments of courts.
>
> Apparently, with consideration of such cases as *Brown vs. Board of Education, Hernandez vs. Texas, Plylar vs. Doe, White vs. Regester,* and others, a commentator in the *San Antonio Express-News* quoted this paragraph and stated:
>
> "What planet does this man call home?"[M2]
>
> Fools rush in where angels fear to tread.

The appellate court decision had little legal significance since both Plaintiffs and Defendants were sure to appeal the decision to the Texas Supreme Court. The only effect of the appellate court reversal was letting the legislature off the hook for another year, but the long suffering children in Texas low wealth schools had already experienced twenty years of frustration and disappointment and resigned themselves to this delay.

EDGEWOOD I IN THE SUPREME COURT

In March 1989, the Texas Supreme Court agreed to hear the appeal. Oral arguments were presented on July 5, 1989. The Texas Legislature had enacted Senate Bill 1010 which incorporated changes to the system since the enactment of HB 72 and an additional appropriation of $450 million to public schools by the 71st Legislature. Albert Cortez presents a description of the Supreme Court hearing:

> In April of 1988, Judge Harley Clark issued his decision in *Edgewood v. Kirby,* a state court case challenging the constitutionality of the Texas education finance system. In that decision Judge Clark ruled that the state system of funding public education violated the State Constitution and mandated that the legislature address the issues raised by September of 1989. On December 14, 1989, the Court of Appeals reversed the district court decision. Plaintiffs and Plaintiff-Intervenors appealed that decision to the Texas Supreme Court, which agreed to review the case. Oral arguments were presented before the Supreme Court on July 5, 1989. At this writing, a decision by the state's high court is still pending.
>
> In June 1989, the Texas Legislature adopted SB 1019. This bill incorporated all significant changes made to the state's education finance system and provided the mechanisms for the expenditure of the additional $450 million allocated to public schools by the Seventy-First Legislature (see the June issue of the *IDRA Newsletter* for details on the provisions incorporated within SB 1019).[116] Two months after the legislature's actions, the Texas Supreme Court sat and listened to both sides present their arguments in *Edgewood vs. Kirby,* the case challenging the constitutionality of that finance system.
>
> **Arguments For and Against**
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> Plaintiffs, represented by Albert Kauffman of the Mexican American Legal Defense and Education Fund (MALDEF), and the Plaintiff-Intervenors' attorneys presented their arguments that the state's

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[M2] *San Antonio Express-News,* Roddy Stinson, December 16, 1988.

system of funding public schools was inequitable, and thus violated the State Constitution's equal protection provisions.

The State Attorney General's office, lawyers for the State of Texas, argued that the state funding scheme was constitutional and was justified on the basis of "effectuating local control of education." They restated their long-standing position: "How much money we spend on our children should not be a matter for the courts [to decide]." (*Houston Post*, July 6, 1989)[117]

During their two-and-a-half hour long presentations, the Supreme Court judges asked many questions regarding both the legal and factual arguments presented by the attorneys. Of the nine judges, one faction seemed clearly supportive of the Plaintiff's position, one seemed inclined toward the state's position, while a third faction appeared undecided based on the nature of their inquiries. According to media, "At least five justices asked direct questions about possible court-ordered solutions to the school finance system . . . two justices gave few hints as to their thinking . . . [while] two . . . asked questions that suggest that they may believe any remedy lies with the legislature." (*San Antonio Light*, July 6, 1989)[118]

Questions About Impact and Available Remedies

Writing on the issue, Mark G. Yudof, Dean of the University of Texas School of Law, states, "The critical question in *Edgewood* is not only whether the Supreme Court will affirm the District Court or the Court of Appeals; it is also the nature of the remedy that the court will impose even if it embraces Judge Clark's view."[119]

Some of the questions directed at the attorneys asked about available remedies, or ways to deal with the unequal resources created by the existing funding system. Justice C. L. Ray asked the attorneys, "Is it our job to declare it unconstitutional, or to declare it unconstitutional and tell the legislature how to write the law?" (*Texas Lawyer*, July 10, 1989).[120] Others on the high court who were concerned about the impact that a ruling might have on local control, questioned the effects that a ruling might have on the more affluent school systems. Justice Nathan Hecht of Dallas indicated that he did not favor any plan that takes away money from wealthier districts. Reacting to a statement made by the Plaintiff's lawyers, Hecht stated, "Doesn't it get down to this? We can either spend more money on education, or we can reduce the quality of some district systems in order to improve the quality of others?" (*Texas Lawyer*, July 10, 1989)[120]

Observers noted that many of the questions centered around the guidance that the court should give to the State Legislature if they were to rule against the school finance system. Options presented ranged from consolidation, re-drawing school district boundaries, and creating regional taxing authorities, which would create more equitable property tax bases to establish a statewide property tax to equalize funding.

Justice Oscar Mauzy, former state senator and former chairman of the Senate Education Committee, suggested that legislative action is overdue. He said, "How many generations of children are we going to require (to attend substandard schools) before this court tells the legislature to do something about it and live up to their constitutional duty?"

Since the presentation of the oral arguments before the State Supreme Court, speculation on the forthcoming decision has abounded, and no clear consensus on the possible outcome has emerged. The fundamental issue which the Supreme Court must confront and which the legislature historically has ducked is, "Whether a funding system that is acknowledged by both sides to be disparate [unequal] can be nonetheless constitutional." (*Texas Lawyer*, 1989)

The Need For Reform

Whatever the decision, recognition of the state's need to address the issue will remain. Even during their oral presentations, the state's attorneys conceded that the funding system was unfair. Recent research focusing on the state's projected employment needs suggests that significant changes in the system are essential. State education officials, the private sector, and political leaders (with the notable exception of the Governor) have conceded that reform of the system is necessary if the state

> is to produce the type of work force needed for the future. While the State Legislature has long followed the course of political expediency, economic imperatives (in addition to or in lieu of court edicts) may provide the long-needed impetus for substantive change. In a report projecting potential labor force changes in Texas in the year 2000, researchers estimate that agriculture-related employment will decline by 40%. At the same time, trade related work will rise by 37%, finance, insurance, and real estate jobs will increase by 35%, and service-related employment needs will increase by 57% (Southern Regional Education Board, 1989). In the report's projections of new jobs in the state by major occupational groups, the primary growth areas include sales and service (24.7% and 25.2% increase, respectively), and professional and managerial positions (14.9% and 13.4% increase respectively). Conversely, crafts and foremen positions are predicted to increase by only 8.9%, while laborer demands will grow by only 7.6% during the same period. As currently financed, the Texas public school system cannot supply the labor needs projected for the year 2000. If we are unwilling to pay the price now, the state may well face a much more expensive tab later.

On October 2, 1989, the Texas Supreme Court announced its ruling in the *Edgewood v. Kirby* case. In a startling 9-to-0 vote, the court ruled in favor of the Plaintiffs, concluding that the current funding scheme violated Article VII of the Texas Constitution. The court gives the Texas Legislature until May 1, 1990, to design an equitable system of school finance or face the closing of the state's public schools.

> At issue is the constitutionality of the Texas, system for financing the education of public school children. Edgewood Independent School District, sixty-seven other school districts, and numerous individual school children and parents filed suit seeking a declaration that the Texas school financing system violates the Texas Constitution. The trial court rendered judgment to that effect and declared that the system violates the Texas Constitution, article I, section 3, article I, section 19, and article VII section 1. By a 2-1 vote, the court of appeals reversed that judgment and declared the system constitutional. 761 S.W.2d 859. We reverse the judgment of the court of appeals and, with modification, affirm that of the trial court.
>
> The basic facts of this cause are not in dispute.[M1] The only question is whether those facts describe a public school financing system that meets the requirements of the Constitution. As summarized and excerpted, the facts are as follows.
>
> There are approximately three million public school children in Texas. The legislature finances the education of these children through a combination of revenues supplied by the state itself and revenues supplied by local school districts which are governmental subdivisions of the state. Of total education costs, the state provides about forty-two percent, school districts provide about fifty percent, and the remainder comes from various other sources including federal funds. School districts derive revenues from local ad valorem property taxes, and the state raises funds from a variety of sources including the sales tax and various severance and excise taxes.
>
> There are glaring disparities in the abilities of the various school districts to raise revenues from property taxes because taxable property wealth varies greatly from district to district. The wealthiest district has over $14,000,000 of property wealth per student, while the poorest has approximately $20,000; this disparity reflects a 700 to 1 ratio. The 300,000 students in the lowest-wealth schools have less than 3% of the state's property wealth to support their education while the 300,000 students in the highest-wealth schools have over 25% of the state's property wealth; thus the 300,000 students in the wealthiest districts have more than eight times the property value to support their education as the 300,000 students in the poorest districts. The average property wealth in the 100 wealthiest districts is more than twenty times greater than the average property wealth in the 100 poorest districts. Edgewood I.S.D. has $38,854 in property wealth per student; Alamo Heights I.S.D., in the same county, has $570,109 in property wealth per student.
>
> The state has tried for many years to lessen the disparities through various efforts to supplement the poorer districts. Through the Foundation School Program, the state currently attempts to

[M1] By agreement of the parties, the 1985–86 school year was used as the test year for purposes of constitutional review.

ensure that each district has sufficient funds to provide its students with at least a basic education. *See* Tex. Educ. Code § 16.002. Under this program, state aid is distributed to the various districts according to a complex formula such that property-poor districts receive more state aid than do property-rich districts. However, the Foundation School Program does not cover even the cost of meeting the state-mandated minimum requirements. Most importantly, there are no Foundation School Program allotments for school facilities or for debt service. The basic allotment and the transportation allotment understate actual costs, and the career ladder salary supplement for teachers is underfunded. For these reasons and more, almost all school districts spend additional local funds. Low-wealth districts use a significantly greater proportion of their local funds to pay the debt service on construction bonds while high-wealth districts are able to use their funds to pay for a wide array of enrichment programs.

Because of the disparities in district property wealth, spending per student varies widely, ranging from $2,112 to $19,333. Under the existing system, an average of $2,000 more per year is spent on each of the 150,000 students in the wealthiest districts than is spent on the 150,000 students in the poorest districts.

The lower expenditures in the property-poor districts are not the result of lack of tax effort. Generally, the property-rich districts can tax low and spend high while the property-poor districts must tax high merely to spend low. In 1985–86, local tax rates ranged from $.09 to $1.55 per $100 valuation. The 100 poorest districts had an average tax rate of 74.5 cents and spent an average of $2,978 per student. The 100 wealthiest districts had an average tax rate of 47 cents and spent an average of $7,233 per student. In Dallas County, Highland Park I.S.D. taxed at 35.16 cents and spent $4,836 per student while Wilmer-Hutchins I.S.D. taxed at $1.05 and spent $3,513 per student. In Harris County, Deer Park I.S.D. taxed at 64.37 cents and spent $4,846 per student while its neighbor North Forest I.S.D. taxed at $1.05 and yet spent only $3,182 per student. A person owning an $80,000 home with no homestead exemption would pay $1,206 in taxes in the east Texas low-wealth district of Leveretts Chapel, but would pay only $59 in the west Texas high-wealth district of Iraan-Sheffield. Many districts have become tax havens. The existing funding system permits "budget balanced districts" which, at minimal tax rates, can still spend above the statewide average; if forced to tax at just average tax rates, these districts would generate additional revenues of more than $200,000,000 annually for public education.

Property-poor districts are trapped in a cycle of poverty from which there is no opportunity to free themselves. Because of their inadequate tax base, they must tax at significantly higher rates in order to meet minimum requirements for accreditation; yet their educational programs are typically inferior. The location of new industry and development is strongly influenced by tax rates and the quality of local schools. Thus, the property-poor districts with their high tax rates and inferior schools are unable to attract new industry or development and so have little opportunity to improve their tax base.

The amount of money spent on a student's education has a real and meaningful impact on the educational opportunity offered that student. High-wealth districts are able to provide for their students broader educational experiences including more extensive curricula, more up-to-date technological equipment, better libraries and library personnel, teacher aides, counseling services, lower student-teacher ratios, better facilities, parental involvement programs, and drop-out prevention programs. They are also better able to attract and retain experienced teachers and administrators.

The differences in the quality of educational programs offered are dramatic. For example, San Elizario I.S.D. offers no foreign language, no pre-kindergarten program, no chemistry, no physics, no calculus, and no college preparatory or honors program. It also offers virtually no extra-curricular activities such as band, debate, or football. At the time of trial, one-third of Texas school districts did not even meet the state-mandated standards for maximum class size. The great majority of these are low-wealth districts. In many instances, wealthy and poor districts are found contiguous to one another within the same county.

Based on these facts, the trial court concluded that the school financing system violates the Texas

Constitution's equal rights guarantee of article I, section 3, the due course of law guarantee of article I, section 19, and the "efficiency" mandate of article VII, section 1. The court of appeals reversed. We reverse the judgment of the court of appeals and, with modification, affirm the judgment of the trial court.

Article VII, section 1 of the Texas Constitution provides:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

The court of appeals declined to address petitioners' challenge under this provision and concluded instead that its interpretation was a "political question." Said the court:

> That provision does, of course, require that the school system be "efficient," but the provision provides no guidance as to how this or any other court may arrive at a determination of what is efficient or inefficient. Given the enormous complexity of a school system educating three million children, this Court concludes that which is, or is not, "efficient" is essentially a political question not suitable for judicial review.

761 S.W.2d at 867. We disagree. This is not an area in which the Constitution vests exclusive discretion in the legislature; rather the language of article VII, section 1 imposes on the legislature an affirmative duty to establish and provide for the public free schools. This duty is not committed unconditionally to the legislature's discretion, but instead is accompanied by standards. By express constitutional mandate, the legislature must make "suitable" provision for an "efficient" system for the "essential" purpose of a "general diffusion of knowledge." While these are admittedly not precise terms, they do provide a standard by which this court must, when called upon to do so, measure the constitutionality of the legislature's actions. *See Williams vs. Taylor,* 19 S.W. 156 (Tex. 1892). We do not undertake this responsibility lightly and we begin with a presumption of constitutionality. *See Texas Public Bldg. Authority vs. Mattox* 686 S.W.2d 924, 927 (Tex. 1985). Nevertheless, what this court said in only its second term, when first summoned to strike down an act of the Republic of Texas Congress, is still true:

> [W]e have not been unmindful of the magnitude of the principles involved, and the respect due to the popular branch of the government . . . Fortunately, however, for the people, the function of the judiciary in deciding constitutional questions is not one which it is at liberty to decline. . . . [We] cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution; [we] cannot pass it by because it is doubtful; with whatever doubt, with whatever difficulties a case may be attended, [we] must decide it, when it arises in judgment.

Morton vs. Gordon, Dallas 396, 397–398 (Tex. 1841). If the system is not "efficient" or not "suitable," the legislature has not discharged its constitutional duty and it is *our* duty to say so.

The Texas Constitution derives its force from the people of Texas. This is the fundamental law under which the people of this state have consented to be governed. In construing the language of article VII, section 1, we consider "the intent of the people who adopted it." *Director of Dept. of Agriculture and Env't vs. Printing Indus. Ass'n,* 600 S.W.2d 264, 267 (Tex. 1980); *see also Smissen vs. State,* 9 S.W. 112, 116 (Tex. 1888). In determining that intent, "the history of the times out of which it grew and to which it may be rationally supposed to have direct relationship, the evils intended to be remedied and the good to be accomplished, are proper subjects of inquiry." *Markowsky vs. Newman,* 136 S.W.2d 808, 813 (Tex. 1940). However, because of the difficulties inherent in determining the intent of voters over a century ago, we rely heavily on the literal text. We seek its meaning with the understanding that the Constitution was ratified to function as an organic document to govern society and institutions as they evolve through time. *See* generally Printing *Indus.*, 600 S.W.2d at 268–269.

The State argues that, as used in article VII, section 1, the word "efficient" was intended to suggest a simple and inexpensive system. Under the Reconstruction Constitution of 1869, the people had been subjected to a militaristic school system with the state exercising absolute authority over the training of children. *See* Tex. Const. art. VII, 1, interp. commentary (Vernon 1955). Thus, the State contends that delegates to the 1875 Constitutional Convention deliberately inserted into this provision the word "efficient" in order to prevent the establishment of another Reconstruction-style, highly centralized school system.

While there is some evidence that many delegates wanted an economical school system, there is no persuasive evidence that the delegates used the term "efficient" to achieve that end. *See* Journal of the Constitutional Convention of the State of Texas 136 (Oct. 8, 1875); S. McKay, *Debates in the Texas Constitutional Convention of 1875*, 107, 217, 350–351 (1930). It must be recognized that the Constitution requires an "efficient," not an "economical," "inexpensive," or "cheap" system. The language of the Constitution must be presumed to have been carefully selected. *Leander Indep. School Dist. vs. Cedar Park Water Supply Corp.*, 479 S.W.2d 908 (Tex. 1972); *Cramer vs. Sheppard*, 167 S.W.2d 147 (Tex. 1943). The framers used the term "economical" elsewhere[M2] and could have done so here had they so intended.

There is no reason to think that "efficient" meant anything different in 1875 from what it now means. "Efficient" conveys the meaning of effective or productive of results and connotes the use of resources so as to produce results with little waste; this meaning does not appear to have changed over time.[M3] *E.q.*, IV *Oxford English* Dictionary 52 (1971), Webster's Third New International Dictionary 725 (1976). One dictionary used by the framers defined efficient as follows:

> Causing effects; producing results; actively operative: not inactive, slack or incapable; characterized by energetic and useful activity . . .

N. Webster, An American Dictionary of the English Language 430 (1864). In 1890, this court described "efficient" machinery as being "such as is capable of well producing the effect intended to be secured by the use of it for the purpose for which it was made." *Maxwell vs. Bastrop Mfg. Co.*, 14 S.W. 35, 36 (Tex. 1890).

Considering "the general spirit of the times and the prevailing sentiments of the people," it is apparent from the historical record that those who drafted and ratified article VII, section 1 never contemplated the possibility that such gross inequalities could exist within an "efficient" system.[M4] *See Mumme vs. Marrs*, 40 S.W.2d 31, 35 (Tex. 1931). At the Constitutional Convention of 1875, delegates spoke at length on the importance of education for *all* the people of this state, rich and poor alike. The chair of the education committee, speaking on behalf of the majority of the committee, declared:

> [Education] must be classed among the abstract rights, based on apparent natural justice, which we individually concede to the State, for the general welfare, when we enter into a great compact as a commonwealth. I boldly assert that it is for the general welfare of all, rich

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[M2] "The legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government . . ." Tex. Const. art. III, 48 (1876, repealed 1969).

[M3] This usage is seen in text as well. *E.g.*, H. Fawcett, *Manual of Political Economics* 193 (1863)("That nothing more powerfully promotes the efficiency of labour than an abundance of fertile land."); G.D. Argyll, *The Reign of Law* 321 (1871) ("This change in mind is the efficient cause of a whole cycle of other changes."); H.B. Stowe, Uncle Tom's Cabin 297 (1850)("He was an expert and efficient workman.").

[M4] Delegate Henry Cline, who first proposed the term "efficient," urged the convention to ensure that sufficient funds would be provided to those districts most in need. § 5. McKay, *Debates in the Constitutional Convention of 1875* 217 (1930). He noted that those with some wealth were already making extravagant provisions for the schooling of their own children and described a public school system in which those funds that had selfishly been used by the wealthy would be made available for the education of all the children of the state. *Id.* at 217–18.

> and poor, male and female, that the means of a common school education should, if possible, be placed within the reach of every child in the State.

S. McKay, *Debates in the Texas Constitutional Convention of 1875* 198 (1930). Other delegates recognized the importance of a diffusion of knowledge among the masses not only for the preservation of democracy, but for the prevention of crime and for the growth of the economy. *See, e q., id.* at 199–200, 216–217, 335.

In addition to specific comments in the constitutional debates, the structure of school finance at the time indicates that such gross disparities were not contemplated. Apart from cities, there was no district structure for schools nor any authority to tax locally for school purposes under the Constitution of 1876. B. Walker and W. Kirby, *The Basics of Texas Public School Finance* S, 86 (1986). The 1876 Constitution provided a structure whereby the burdens of school taxation fell equally and uniformly[M5] across the state, and each student in the state was entitled to exactly the same distribution of funds. *See* Tex. Const. art. VII, § 5 (1876). The state's school fund was initially apportioned strictly on a per capita basis. B. Walker and W. Kirby at 21. Also, a poll tax of one dollar per voter was levied across the state for school purposes. Id. These per capita methods of taxation and of revenue distribution seem simplistic compared to today's system; however, they do indicate that the people were contemplating that the tax burden would be shared uniformly and that the state's resources would be distributed on an even, equitable basis.

If our state's population had grown at the same rate in each district and if the taxable wealth in each district had also grown at the same rate, efficiency could probably have been maintained within the structure of the present system. That did not happen. Wealth, in its many forms, has not appeared with geographic symmetry. The economic development of the state has not been uniform. Some cities have grown dramatically, while their sister communities have remained static or have shrunk. Formulas that once fit have been knocked askew. Although local conditions vary, the constitutionally imposed state responsibility for an efficient education system is the same for all citizens regardless of where they live.

We conclude that, in mandating "efficiency," the constitutional framers and ratifiers did not intend a system with such vast disparities as now exist. Instead, they stated clearly that the purpose of an efficient system was to provide for a "general diffusion of knowledge." (Emphasis added.) The present system, by contrast, provides not for a diffusion that is general, but for one that is limited and unbalanced. The resultant inequalities are thus directly contrary to the constitutional vision of efficiency.

The State argues that the 1883 constitutional amendment of article VII, section 3 expressly authorizes the present financing system. However, we conclude that this provision was intended *not* to preclude an efficient system but to serve as a vehicle for injecting more money into an efficient system. James E. Hill, a legislator and supporter of the 1883 amendment, argued:

> If (article VII, section 1) means anything, and is to be enforced, then additional power must be granted to obtain the means "to support and maintain" an efficient system of public free schools. What is such a system, then? is the question. I have examined the laws of the older States of this Union, especially those noted for efficient free schools, and not one is supported alone by State aid, but that aid is supplemented always by local taxation. . . . When a man tells me he favors an efficient system of free schools, but is opposed to local taxation by districts or communities to supplement State aid, he shows that he ignores the successful systems of other States, or he is misleading in what he says.

[M5] Article VIII, section l'§ 5 requirement of "equal and uniform" taxation was also the subject of much debate at the Constitutional Convention of 1875. There were clearly strong feelings against exemptions from taxation and special privileges. *See* generally 2 G. Braden, The Constitution of the State of Texas: *An Annotated and Comparative Analysis* 564–565 (1977). The framers opposed any schemes that would allow any classes of people to avoid an equal burden of taxation. *See* § 5. McKay at 296, 303, 306.

Galveston Daily News, August 10, 1883, at 3, col. 9 (interview with Hon. James E. Hill). Governor O. M. Roberts also gave strong address to the 18th Legislature, Governor Roberts directed the legislature's attention to the efficiency standard set by article VII, section 1 and said: "The standard fixed in law is certainly high enough to enable the masses of people generally, who receive the benefit of it, to have that general diffusion of knowledge. . . ." Speech of Govs. O. M. Roberts, S. J. of Tex., 18th Leg., Reg. Sess. 15 (1883). He then explained the need for the amendment by stating that the practical remedy for the attainment of the objective of efficiency was the formation of school districts with the power of taxation. Thus, article VII, section 3 was an effort to make schools more efficient and cannot be used as an excuse to avoid efficiency. *See also* 761 S.W.2d at 874 (further discussing the historical context of the amendment).

In the context of article VII, section 1, the legislature has expressed its understanding of the term "efficient" for a long time even though it has never given the term full effect. Sixty years ago, the legislature enacted the Rural Aid Appropriations Act with the express purpose of "equalizing the educational opportunities afforded by the State. . . ." 1929 Tex. Gen. Laws, ch. 14 at 252 (3rd called session). Again, in creating the Gilmer-Aikin Committee to study school finance, the legislature indicated an awareness of this obligation when it spoke of "the foresight and evident intention of the founders of our State and the framers of our State Constitution to provide equal educational advantages for all." Tex. H. Con. Res. 48, 50th Leg. (1948). Moreover, section 16.001 of the legislatively enacted Education Code expresses the state's policy that "a thorough and efficient system be provided . . . so that each student . . . shall have access to programs and services . . . that are substantially equal to those available to any similar student, notwithstanding varying economic factors." Not only the legislature, but also this court has previously recognized the implicit link that the Texas Constitution establishes between efficiency and equality. In *Mumme vs. Marrs*, 40 S.W.2d at 37, we stated that rural aid appropriations "have a real relationship to the subject of equalizing educational opportunities in the state, and tend to make our system more efficient. . . ."

By statutory directives, the legislature has attempted through the years to reduce disparities and improve the system. There have been good faith efforts on the part of many public officials, and some progress has been made. However, as the undisputed facts of this case make painfully clear, the reality is that the constitutional mandate has not been met.

The legislature's recent efforts have focused primarily on increasing the state's contributions. More money allocated under the present system would reduce some of the existing disparities between districts but would at best only postpone the reform that is necessary to make the system efficient. a band-aid will not suffice; the system itself must he changed.

We hold that the state's school financing system is neither financially efficient nor efficient in the sense of providing for a "general diffusion of knowledge" statewide, and therefore that it violates article VII, section 1 of the Texas Constitution. Efficiency does not require a per capita distribution, but it also does not allow concentrations of resources in property-rich school districts that are taxing low when property-poor districts that are taxing high cannot generate sufficient revenues to meet even minimum standards. There must be a direct and close correlation between a district's tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort. Children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds. Certainly, this much is required if the state is to educate its populace efficiently and provide for a general diffusion of knowledge statewide.

Under article VII, section 1, the obligation is the legislature's to provide for an efficient system. In setting appropriations, the legislature must establish priorities according to constitutional mandate; equalizing educational opportunity cannot be relegated to an "if funds are left over" basis. We recognize that strong public interests are competing for available state funds. However, the legislature's responsibility to support public education is different because it is constitutionally imposed. Whether the legislature acts directly or enlists local government to help meet its obligation, the end product must still be what the constitution commands—i.e. an efficient system of public free schools throughout the state. *See Lee vs. Leonard Indep. School Dist.*, 24 S.W.2d 449, 450 (Tex. Ci*vs*. App.—Texarkana 1930, writ ref'd). This does not mean that the state may not recognize differences in area costs or in costs associated with providing an equalized educational opportunity to atypical students or disadvantaged students. Nor does it mean that local communities would be precluded from supplementing an efficient system established by the legislature; however, any local enrichment must derive solely from local tax effort.

Some have argued that reform in school finance will eliminate local control, but this argument has no merit. An efficient system does not preclude the ability of communities to exercise local control over the education of their children. It requires only that the funds available for education be distributed equitably and evenly. An efficient system will actually allow for more local control, not less. It will provide property-poor districts with economic alternatives that are not now available to them. Only if alternatives are indeed available can a community exercise the control of making choices.

Our decision today is not without precedent. Courts in nine other states with similar school financing systems have ruled those systems to be unconstitutional for varying reasons.[M6] *DuPree vs. Alma School Dist. No. 30*, 651 S.W.2d 90 (Ark. 1983); *Serrano vs. Priest*, 487 P.2d 1241 (Cal. 1971); *Horton vs. Meskill*, 376 a.2d 359 (Conn. 1977); *Rose vs. Council for Better Educ.*, No. 88-SC-804-TG, (Ky. June 8, 1989) (Westlaw); *Helena Elementary School Dist. No. 1 vs. State*, 769 P.2d 684 (Mont. 1989); *Robinson vs. Cahill*, 303 A2d 273 (N.J.), *cert. denied*, 414 U.S. 976 (1973); Seattle School *Dist. No. 1 vs. State*, 585 P.2d 71 (Wash. 1978); *Paulev vs. Kelly*, 255 S.E.2d 859 (W.Va. 1979); *Washakie County School Dist. No. 1 vs. Herschler*, 606 P.2d 310 (Wyo.), *cert. denied*, 449 U.S. 824 (1980).[M7]

Because we have decided that the school financing system violates the Texas Constitution's § 5 "efficiency" provision, we need not consider petitioners' other constitutional arguments. The Texas school financing system as set forth in the Texas Education Code, sections 16.001, et seq., and as implemented in conjunction with local school districts containing unequal taxable property wealth, is unconstitutional under article VII, section 1 of the Texas Constitution.

Petitioners are entitled to recover against the state their attorney fees as found by the trial court. Tex. Ci*vs*. Prac. Rem. Code 104.001–104.002; *Texas State Employees Union vs. Texas Dept. of Mental Health and Mental Retardation*, 746 S.W.2d 203 (Tex. 1987); *see also Camarena vs. Texas Employment Comm'n*, 754 S.W.2d 149 (Tex. 1988). However, the trial court did not abuse its discretion in refusing to award attorney fees against the defendant school districts. *See Oake vs. Collin County*, 692 S.W.2d 454 (Tex. 1985).

Although we have ruled the school financing system to be unconstitutional, we do not now instruct the legislature as to the specifics of the legislation it should enact; nor do we order it to raise taxes. The legislature has primary responsibility to decide how best to achieve an efficient system. We decide only the nature of the constitutional mandate and whether that mandate has been met. Because we hold that the mandate of efficiency has not been met, we reverse the judgment of the court of appeals. The legislature is duty-bound to provide for an efficient system of education, and only if the legislature fulfills that duty can we launch this great state into a strong economic future with educational opportunity for all.

[M6] *But see Shofstall vs. Hollins* 515 P.2d 590 (Ariz. 1973); *Lujan vs. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982); *McDaniel vs. Thomas*, 285 S.E. 2d 156 (Ga. 1981); *Thompson vs. Engelking*, 537 P.2d 635 (Idaho 1975); *Hornbeck vs. Somerset County Bd. of Educ.*, 458 a.2d 758 (Md. 1983); *Board of Educ., Levittown vs. Nyquist*, 439 N.E.2d 359 (N.Y. 1982), *appeal dism'd*, 459 U.S. 1138 (1983); *Board of Educ. vs. Walter*, 390 N.E.2d 813 (Ohio 1979), *cert. denied*, 444 U.S. 1015 (1980); *Fair School Finance Council of Oklahoma, Inc. vs. Oklahoma*, 746 P.2d 1135 (Okla. 1987), *Olsen vs. State*, 554 P.2d 139 (Or. 1976); *Danson vs. Casey*, 399 a.2d 360 (Pa. 1979); Richland *County vs. Campbell*, 364 S.E.2d 470 (S.C. 1988).

[M7] The Supreme Court of Michigan has also considered the question and initially held that its system was unconstitutional; however, on rehearing the court vacated its opinion and held that it had improvidently granted the certified question. *Milliken vs. Green*, 203 N.W.2d 457 (1972), *on rehearing*, 212 N.W.2d 711 (Mich. 1973).

Because of the enormity of the task now facing the legislature and because we want to avoid any sudden disruption in the educational processes, we modify the trial court's § 5 judgment so as to stay the effect of its injunction until May 1, 1990.[M8] However, let there be no misunderstanding. a remedy is long overdue. The legislature must take immediate action. We reverse the judgment of the court of appeals and affirm the trial court's § 5 judgment as modified.
Oscar H. Mauzy, Justice

[M8] We note that the Governor has already called a special session of the legislature to begin November 14, 1989; the school finance problem could be resolved in that session.

CHAPTER 9

SENATE BILL 1 AND *EDGEWOOD* II

Advocates of school finance reform were elated by the Supreme Court decision, but thoroughly confused as to the direction of reform. After an elaborate condemnation of the lack of equity in the system, the Supreme Court appeared to endorse continued local enrichment from local tax effort, the main source of the inequities in the system. The court noted, "Nor does it mean that local communities would be precluded from supplementing an efficient system established by the legislature; however, any local enrichment must derive solely from local tax effort." It did not make sense that the court would conclude that all districts must have the same amount of money, and when they did, some districts could have more. We preferred to interpret this segment of the Supreme Court decision as stating that an efficient foundation program could be augmented not by differences in local wealth, but by additional taxation with an equalized yield.

Dr. Albert Cortez interpreted the Supreme Court decision in a November 1989 article of the *IDRA Newsletter*, "Texas Supreme Court Declares State School Funding System Unconstitutional."[122] Cortez closes the article with a brief discussion of the implications of the historic decision:

> **More Money as Reform**
>
> In a reference to recent legislative efforts, the court took note that some policy-makers had made good faith efforts to deal with some of the issues before the court. The court cautioned state officials about assuming that the problem could be solved by simply upgrading funding for the current system by stating:
>
> There have been good faith efforts on the part of many public officials, and some progress has been made. However, the undisputed facts of this case remain clear; the reality is that the constitutional mandate has not been met.
>
> The legislature's recent efforts have focused primarily on increasing the state's contribution. More money allocated under the present system would reduce some of the existing disparities between districts but would at best only postpone the reform that is necessary to make the system efficient. A band-aid will not suffice; the system itself must be changed.
>
> **Emphasis on Efficiency**
>
> A review of the court's rationale for its decision reveals that it relied heavily on the constitutional reference to the state's responsibility "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Over half of the 19-page decision is devoted to an examination of the meaning of efficiency. Commenting on the existing funding system, the court proposed the following:
>
> We hold that the state school funding system is neither financially efficient nor efficient in the sense of providing for a general diffusion of knowledge statewide, and therefore it violates Article VII, Section 1 of the Texas Constitution . . . There must be a direct and close correlation between a district's tax effort and the educational resources available to it. In other words, a district must have substantially equal access to similar revenues per pupil at similar levels of tax effort. Children who live in poor districts and children who live in rich districts must be afforded substantially equal opportunity to have access to educational funds.

Referral to the Legislature

The court did not offer a specific remedy to address its constitutional finding. Acknowledging the separation of powers among the branches of government, it stated:

> Although we have ruled the school financing system to be unconstitutional, we do not now instruct the legislature as to the specifics of the legislation it should enact; nor do we order it to raise taxes. The legislature has the primary responsibility to decide how to best achieve an efficient system. We decide only the nature of the constitutional mandate and whether that mandate has been met.

Time Lines

Because it recognized the complexity of the task it was laying before the legislature, the Supreme Court agreed to delay the trial court's injunction (which prohibited the distribution of state funding under the current system) until May 1, 1990. The decision closes with the following stern warning, "However, let there be no misunderstanding. A remedy is long overdue. The legislature must take immediate action."

The Aftermath

After the announcement of the Supreme Court's decision a flurry of activity followed. The governor announced the formulation of yet another blue ribbon committee to study possible responses to the decision. House and senate committees have convened hearings on the case to examine the mandate and formulate possible legislative responses. Education interest groups have announced their intentions to form task forces and/or work groups to formulate proposals. Additionally, the governor has announced his intent to call a special session of the legislature to deal with the issue before the May 1, 1990, deadline.

Implications

Discussions with legislators, lobbyists, and reform activists indicate that there will be long and bitter battles during the forthcoming special session. Entrenched proponents of the status quo will attempt to preserve their favored status while reformers will push for comprehensive changes. Legal experts concur that it will be left for the courts to review the legislature's response to its decision if and when a school funding reform bill is passed. Whatever the outcome, it may be safe to presume that the Texas court's ruling may be one of the most significant education decisions ever made, with repercussions likely to be felt into the next century.

In the same November 1989 issue of the *IDRA Newsletter,* Al Kauffman from MALDEF and lead attorney in the court case also analyzes the monumental decision and its legal and educational ramifications in an article, *Edgewood v. Kirby: Its Legal and Educational Ramifications:*[123]

> The Texas Supreme Court has held that the Texas system of funding public schools is unconstitutional. In a very strong 9-0 decision, the Supreme Court held that the Texas school finance system (composed of a combination of school districts of wildly varying property values and state's formulas) violated the "efficiency clause" of the Texas Constitution. *Edgewood v. Kirby* is probably the most important judicial decision in the history of Texas regarding public schools. It might well turn out to be the most important Texas Supreme Court decision interpreting the Texas Constitution.
>
> The Mexican American Legal Defense and Educational Fund (MALDEF) has been very fortunate to represent the plaintiffs—poor school districts and families in those school districts. MALDEF filed the case in May 1984, refiled it in March 1985, and represented the parties throughout the three month trial in 1987. MALDEF also filed the court of appeals argument in 1988 and the Supreme Court argument in 1989.
>
> Of course MALDEF did not do this alone. Dr. Albert Cortez and Dr. José A. Cárdenas of IDRA were our educational and spiritual leaders. Jimmy Vasquez of the Edgewood district was an incred-

ibly energetic and articulate spokesman for our cause. Craig Foster of the Equity Center in Austin and Richard Harris of UTSA provided much needed data. Camilo Perez-Bustillos, Roger Rice and Peter Roos of META, Inc. provided invaluable legal help.

The opinion will have far-reaching beneficial effects on both legal and educational progress in Texas. Its implications must be considered from the point of view of the children of low wealth districts and the point of view of everyone in the state.

The opinion held that the school finance system is not efficient because it wastes the state's resources, mainly through the advantages given to high wealth districts that can tax low and spend high. The system wastes the state's resources by not allowing the whole state to share in the property wealth of certain high wealth districts. The opinion did not decide the case on equal protection grounds since the court followed a well-established rule of constitutional interpretation—if you have decided a case on one ground, it is unnecessary to go further in interpreting the constitution. On the other hand, the Supreme Court did throw out all of the "rationales" for the school finance system that had been offered by the state. The Supreme Court held that an equitable school finance system will increase, not decrease local control. The court also held that the provision of creating school districts in the Texas Constitution was created to help the legislature provide an efficient system, not to allow school districts to protect wealth or to keep unfair advantages behind the school district boundaries. In effect, the Supreme Court did uphold the equal protection holding of the district court even though it did not state it explicitly.

On the educational front, the case is important because it stated explicitly what all of us believe—that education does have a "first call" on revenues of the state because education is constitutionally required. The Supreme Court went on to say that an equitable and efficient system is necessary for future progress in the state. The state must spend adequate resources on every student in the state, not only those who happen to be lucky enough to live in very wealthy school districts.

There has been tremendous discussion concerning the legal and educational ramifications of the opinion. Those who have long been against reform in school finance are interpreting the decision as very narrow and ambiguous. This interpretation could be dangerously misconstrued. The opinion clearly expresses that a change in the system is necessary; "a band-aid would not suffice."

The following are some quotes of the Supreme Court that are especially meaningful and will serve as guideposts for educational policy in the next decade.

- It must be recognized that the Constitution requires an "efficient" not an "economical," "inexpensive," or "cheap" system.
- "Efficient" conveys the meaning of effective or productive of results and connotes the use of resources so as to produce results with little waste; this meaning does not appear to have changed over time.
- The present system, by contrast, does not provide for a diffusion [of knowledge] that is general, but for one that is limited and unbalanced. The resultant inequalities are thus directly contrary to the constitutional vision of efficiency.
- More money allocated under the present system would reduce some of the existing disparities between districts, but would at best only postpone the reform that is necessary to make the system efficient. A band-aid would not suffice; the system itself must be changed.
- There must be a direct and close correlation between a district's tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort. Children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to education funds.
- An efficient system will actually allow for more local control, not less.
- The legislature's responsibility to support public education is different because it is constitutionally imposed. Whether the legislature acts directly or enlists local govern-

> ment to help meet its obligation, the end product must still be what the constitution commands—i.e. an "efficient system of public free schools throughout the state."
>
> - Let there be no misunderstanding. A remedy is long overdue. The legislature must take immediate action.
>
> On behalf of the plaintiffs in the litigation, MALDEF sees this decision as offering a "once in a lifetime" opportunity to make real changes in the school finance system so that all children in that state will have equal opportunities and guaranteed equal opportunities in the future. An infusion of monies, even if they are significant monies, will not be enough to effect long-term change. The Supreme Court decision demands a change in the system. The plaintiffs and MALDEF will continue to fight until there are changes in the system. Our children and our future demand it.

It was generally assumed that the State Supreme Court ruling had ended the 20-year long controversy over school finance inequities in the state. This was not to be. Advocates of school finance reform were interested in a constitutional system of school finance which would give all children in the state equality of educational opportunity. Finding the existing system unconstitutional was one thing, designing a constitutional system was another. Privileged taxpayers with children in privileged programs were not ready to throw in the towel. With extensive assistance from the Texas Education Agency which had no intention of eliminating the past elitist educational system, they continued the fight in the public media, the legislature and in the courts.

In keeping with tradition, Gov. Bill Clements appointed a committee to study the issue and make recommendations to the legislature.

Advocates of reform were relieved when the governor finally called a special session of the legislature in late February 1990 to respond to the high court order. Their original optimism quickly turned to dismay when it became evident that the proposals for the redesigning of the system were more of the same dysfunctional plans that had been presented and enacted for the past 20 years. The central theme in preparation for the complicated task of redesigning the system was, "The court has ruled that all children are equal, but we know that some of them are more equal than others." The same band-aids which had been applied in past legislative sessions were brought out for reuse as remedy for the Supreme Court's decision.

In February 1990, I published an article taking exception to the direction the redesigning was taking:[124]

> Many years ago I heard the story of the little boy who lost a dime and was looking for it under a street lamp. A passerby joined him in his search and after failing to find it, asked, "Exactly where did you drop the dime?"
>
> "At the corner one block down the street."
>
> "Then why aren't you looking for the dime there?"
>
> "Because the light's much better over here."
>
> The ongoing effort to redesign the Texas system of school finance is very reminiscent of this story. An abundance of experts in school finance are working diligently on the development of new plans involving different state and local shares, revised foundation school programs, one, two and three-tiered funding systems, guaranteed yields and new concepts of tax base sharing in response to the present system having been found unconstitutional.
>
> Unfortunately, although the new plans contain many meritorious ideas, most of them completely ignore the basic weakness of the present system, the basic inequality challenged in the courts, and the basic finding of the district and supreme courts, namely that *"the Texas school financing system . . . with school districts containing unequal taxable property wealth, is unconstitutional . . ."*.
>
> The present system contains three tiers of state and local funding. The first tier is the Foundation School Program, which is very much equalized. Entitlements under the program are funded by a combination of state and local money, with the wealth of school districts neutralized. Low wealth districts receive a major portion of the cost of the foundation school program from the state; high wealth districts receive a minor portion (if any) of the cost of the program from the state. The courts took no exception to this portion of the system in *Edgewood v. Kirby*, other than to note that certain elements were underfunded.

The second tier consists of state-equalized enrichment funds, which the local school district may wish to expend from locally collected taxes over and above the cost of the Foundation School Program. This equalization takes place through a guaranteed yield system in which a limited additional tax effort is guaranteed a specified return, with the difference in local revenue and the guaranteed yield being contributed by the state. As in the case of the equalized foundation school program, this equalized enrichment effort received no exceptional notice in the courts.

The third tier currently consists of unequalized enrichment funds which the local school district may wish to expend from locally collected taxes over and above the equalized foundation school program and the equalized enrichment program. Since districts have varying tax bases, the additional tax effort produces varying amounts of additional revenue, from a $2.27 revenue for each additional 1 cent of tax effort in the poorest district, to more than $600 for each additional 1 cent of tax effort in the wealthiest districts.

It was this final tier that was found unconstitutional by the courts. The unequalized enrichment gives students in different school districts differing amounts of additional funds for enhancing educational opportunity beyond the basic programs provided by the equalized foundation school program and equalized enrichment.

Instead of addressing this unconstitutional feature of the system of school finance, many of the reformers have chosen to address the amounts provided in the first two tiers of the system. Like the little boy seeking his dime at the wrong location because of the better lighting, reformers are seeking redress in the wrong location of the finance system because of political expediency.

In reviewing the multitude of plans and ideas being made available for legislative consideration, one cannot help but wonder if the experts in school finance are aware of the court's ruling in *Edgewood v. Kirby*, since there appears to be little relationship between most of the emerging recommendations and the finding of the courts.

Most plans being presented call for extensive additional state expenditures to increase the level of the first two tiers, the Foundation School Program and the equalized enrichment. With few exceptions, the proposed plans then conclude with the historic specification that school districts may enhance the proposed system with any amount of additional unequalized enrichment funds, precisely the characteristic of the present program which the courts found unconstitutional.

In order for the present system to be brought into conformity with constitutional prescription, it is necessary that all district wealth be either neutralized or eliminated. *The level of funding for the equalized portions of the system is immaterial if unequalized enrichment is allowed to exist.*

The following figure illustrates this point. The results of a 10 cent tax effort over and above the equalized portion of the system produces differing revenues for each of the five school districts of differing wealth. Regardless of the level of equalized effort, regardless of the level of guaranteed yield, regardless of the characteristics of the first or second tier, regardless of whether the state adds no additional money or adds $10 billion to the system, it is obvious that through the unequalized enrichment, Edgewood will have almost twice as many dollars as Edcouch-Elsa. The El Paso school district will have almost three times as much revenue as Edgewood, Houston will have more than twice the amount as El Paso, and Alamo Heights will have more than twice the amount of unequalized enrichment than Houston. Alamo Heights, with its $578,109 in taxable wealth per student, will have more than two times as many enrichment dollars as Houston, more than four times as much as El Paso, more than 14 times as much as Edgewood, and more than 25 times as much as Edcouch-Elsa (see Figure I, below).

There is no way that a funding scheme which allows for unequalized enrichment can be interpreted as being consistent with the courts' finding that a system in which school districts have unequal taxable property wealth is unconstitutional.

Proponents of school finance plans argue that a higher level of state equalization will produce equalization for a high percentage of the children in the state. As long as school districts can enrich with additional local funds, there is no equalization for any of the children of the state. Claims made that a specific plan with unequalized enrichment "equalizes the system for 95 percent of the children" is like saying that you have caught 95 percent of your cows while the corral gate is still open.

Instead of seeking legislative relief on the wrong street corner, school finance reformers should seek the solution where the problem is to be found. This means that the only way a constitutional solution is to be found is by either the neutralization of district wealth by unlimited state equalization (a guaranteed yield for an unlimited level of enrichment selected by any district), or the elimination of excess wealth by placing a limit on the use of local wealth which can be used for enrichment purposes.

George Santayana stated that a people ignorant of history are doomed to repeat the mistakes of the past. Texas should note that other states, such as California and New Jersey, expended billions of dollars in fruitless efforts which did not address the basic problem, only to have the courts rule the additional effort still unconstitutional. One can only hope that Texas will learn from these experiences and not expend massive amounts of money addressing the wrong part of the system without any equalization to show for it.

(Figure 1 in the article shows the unequalized enrichment yields of five school districts with varying taxable wealth with a 10 cent enrichment tax rate above the guaranteed yield:)

District	*Yield*
Edcouch-Elsa	$24
Edgewood	41
El Paso	121
Houston	281
Alamo Heights	578

On February 6, 1990, before the called session of the legislature, members of the Plaintiff and Plaintiff-Intervenor teams met in Austin to continue the formulation of reform legislation. In attendance were Craig Foster, director of the Equity Center, Al Kauffman, Dr. Albert Cortez, Dr. José A. Cárdenas, school superintendents Sid Pruitt from Alvarado, James Vasquez from Edgewood, Charles Benson from Corpus Christi, Augusto Guerra from Pharr-San Juan-Alamo, Bill Chapman from Kenedy and Bill Grusendorf from San Saba.

The meeting focused on alternative ways in which equity could be achieved and the development of strategies for their legislative support. During this meeting, we initiated contingency plans for continued litigation if the legislature failed to enact and fund a school finance program which would afford all children in the state equal educational opportunity.

Right before the Austin meeting, the Carnegie Corporation of New York provided IDRA with a new grant for $50,000 to provide technical assistance to the plaintiffs in the development of an equitable system of school finance, and for the analysis of any other plan enacted by the special session of the legislature.

THE BLUE RIBBON TASK FORCE

Gov. Clements' Blue Ribbon Task Force on Public Education issued its recommendations on February 28, 1990. The recommendations were so bad that two of the panel members voted against them, former San Antonio Mayor Henry Cisneros and State Representative and House Education Committee Chair Ernestine Glossbrenner. IDRA staff members Albert Cortez and José A. Cárdenas had provided Cisneros an afternoon-long Sunday briefing on school finance issues, and Rep. Glossbrenner had consistently supported the plaintiff and IDRA agenda. Sen. Carl Parker, chair of the Senate Committee on Education, was so disgusted with the direction of the panel that he did not even attend the last meeting in which the vote took place.

In a replay of the Perot SCOPE committee's performance six years earlier, the ambitious Governor's Task Force on Public Education attempted to achieve both an equitable system of school finance and an efficient instructional system, yet produced neither.

The task force displayed one of the basic weaknesses of committee work. Attempts to arrive at consensus within the group inevitably lead to the making of decisions based on the lowest common denominator. Committee decisions inevitably are compromised to incorporate the wishes of the stupidest member of the group, the most tractive and the most reactionary. In this task force, the court's charge to provide financial equity was quickly compromised with the preservation of an elitist system of education.

The following sarcastic report I wrote on the recommendations was issued as an IDRA *Special Legislative Bulletin* in March 1990.[125] It clearly reflects the 20 years of frustration with committees, select committees, task forces, study groups and other panels which had studied and recommended school finance legislation.

> After endless hours of meetings, hurried briefings on school finance, report after report on statistical approaches to fiscal neutrality, and much deliberation on the part of the members of the blue ribbon panel (created to respond to the courts finding that the Texas system of school finance was unconstitutional), the blue ribbon panel has issued its recommendations to the Texas Legislature.
>
> The recommendations are so bad that two of the panel members voted against them, former San Antonio Mayor Henry Cisneros and State Rep. Ernestine Glossbrenner, chair of the House Committee on Education. Sen. Carl Parker, chair of the Senate Committee on Education, did not even attend the last meeting in which the vote took place.
>
> Ambitiously attempting to achieve both an equitable system of school finance and an efficient instructional system, the panel produced neither.
>
> The members of the blue ribbon panel will be red-faced as they look over the Texas Education Agency's printout of what they have achieved. Consider the following:
>
> **The Basic Plan**
>
> Under the present system of school finance, which has justifiably been found unconstitutional, the wealthy Alamo Heights school district in San Antonio, with a $0.716 tax effort per $100 in appraised valuation enjoys $4,497 per pupil in revenues. The Edgewood school district with a $0.746 tax effort, receives $3,354 in revenues. Thus Alamo Heights, with a lesser tax effort, receives 34 percent more revenue than Edgewood.
>
> Under the system proposed by the governor's panel, in the first year of reform Alamo Heights would receive only $4,496 at its current tax rate, a very significant decrease of $l per pupil.
>
> This decrease of $l in funds available to the Alamo Heights school district will probably doom the blue ribbon recommendations, since it is obviously guilty of "Robin Hood" financing, taking from the rich school district to give to poor Edgewood. Such an approach is a definite no-no in our current King John era, where we take from the poor and give to the rich.
>
> The big payoff is in the increase of Edgewood's revenue. At its current tax rate (higher than the Alamo Heights rate), Edgewood would receive $3,482, an increase of $132 per pupil. The differences in revenue would be narrowed from $1,143 to $1,014 per pupil as indicated in Table 1 below. Now Alamo Heights with a lesser rate will have *only* 29 percent more revenue than Edgewood.
>
> "The [proposed] plan is fair to school districts and will provide the remedy called for by the state Supreme Court in *Edgewood v. Kirby*," said Charles Miller, chairman of the blue ribbon panel. Incidentally, Gov. Bill Clements was ecstatic, noting that the problem of discriminatory revenues had been solved without the need for additional taxation.
>
> Projections for other low wealth districts did not look too promising, but the blue ribbon panel, in its infinite wisdom, added a "hold harmless" provision. This thoughtful provision prevents poor school districts from receiving less state aid in the first year of implementation than they received before the reform recommendations.

TABLE 1 *FOUNDATION SCHOOL PROGRAM COMPARISONS*

	Present System		*Gov. Plan Year 1*	
District	*Tax*	*Revenue*	*Tax*	*Revenue*
Alamo Heights	.716	$4,497	.716	$4,496
Edgewood	.746	3,354	.746	3,482

Lest the reader conclude that the entire activity of the Governor's Task Force on Public Education was fruitless, let me admit that the foregoing is only the basic portion of the plan. There is more.

Enrichment Equalization

The recommendations also provide for a Guaranteed Yield over and above the Foundation School Program. Under this provision, the Edgewood school district could increase its tax rate to $0.94. If Edgewood taxpayers choose to do so (assuming that they can afford to do so), then their total revenue would increase to $3,622 compared to $4,496 for Alamo Heights.

Of course if Alamo Heights taxpayers also choose to increase their tax rate to $0.94 (which they can easily afford to do), then Alamo Heights would have revenues of $5,791 per pupil, or $2,169 per pupil (60 percent) above Edgewood revenues. (See Table 2)

The task force probably concluded that Alamo Heights would not raise its tax rate since there is general consensus that "only the little people pay taxes."You just cannot blame Sen. Parker for disassociating himself with this reform effort. He is probably concerned that the Supreme Court is going to find the blue ribbon panel in contempt even before the legislative session begins.

Five-Year Projections

Five-year projections for equalization under the recommendations of the Governor's Task Force on Public Education appear more promising if two basic assumptions will hold true. First, that the Edgewood district can and will raise taxes by 50 percent to $1.12. Second, that the Alamo Heights district will not raise taxes during the five-year period. With the infusion of $4.318 billion in additional state effort over the five-year period and with hefty increases in local property taxes, at a common tax rate of $1.12 per $100 appraised valuation, Alamo Heights would be $2,571 per pupil ahead of Edgewood in revenues. Disparities apparently get worse with time.

School Facilities

One of the salient features of the Texas system of school finance is the complete absence of any state aid, and specifically state equalizing aid, for school construction.

In the absence of any amount of equalization, the disparity in facilities between rich and poor school districts is even worse than the disparity in instruction.

This absence was noted by the district court and is included as part of the system found unconstitutional.

In its recommendations for revising the system, the governor's task force makes no allocation for facilities for the first year, although it does call for a study of the problem. The last time a governor's committee made a study of the problem, the findings were so embarrassing that the study was never made public.

For the second and third years of the implementation of the solution a recommendation is made for an allocation of $100 million a year for emergency construction. One cannot help but note that the expenditures for facilities exceed $1.5 billion annually, thus, the absence of any funding during the first year more than guarantees that sufficient emergencies will manifest themselves by the second and third years to make full use of the $100 million in state aid.

TABLE 2 *ENRICHMENT EQUALIZATION IMPACT ON DISTRICT FUNDING, YEAR 1*

	With Guaranteed Yield		*With Guaranteed Yield*	
District	*Tax*	*Revenue*	*Tax*	*Revenue*
Alamo Heights	.716	$4,496	.94	$5,791
Edgewood	.94	3,622	.94	3,622

TABLE 3 *ENRICHMENT EQUALIZATION IMPACT ON DISTRICT FUNDING, YEAR 5*

	Gov. Plan Year 5		*Gov. Plan Year 5*	
District	*Tax*	*Revenue*	*Tax*	*Revenue*
Alamo Heights	.716	$4,069	1.12	$6,404
Edgewood	1.12	3,833	1.12	3,833

Weighted Average Daily Attendance

The amount of guaranteed yield in the current system found unconstitutional is provided by weighted student units. This means that the amount guaranteed, $18.25 for each penny of tax effort up to 36 cents above the Foundation School Program level, produces revenue adjusted for special student and district characteristics and needs. Districts with an abundance of disadvantaged kids receive a guaranteed yield that takes this into consideration.

The blue ribbon panel recommends that in the first year the guaranteed yield for each penny of tax effort be increased from $18.25 to $19.00. However, the distribution formula is changed from weighted students to regular average daily attendance.

Under the current system Edgewood receives $18.25 per weighted student, which converts to $26.05 per weighted student. Using the task force formula, Edgewood's entitlement would be $19.00 per student in the first year ($7.05 *less* than what they are currently receiving). In the fifth year of implementation, Edgewood would receive $26.00 per student, still 5 cents less than what they are receiving right now.

Actually, Edgewood would not really receive less since the task force added a "save harmless" provision which would provide the same amount of funds currently being provided.

The change in distribution is still interesting because of the use of "voodoo economics," which gives the appearance that equity is being increased through the increase in the guaranteed yield, although the amount is actually being decreased through the change in methodology. "What the Lord giveth, the Lord taketh away." The blue ribbon panel goes through a motion which implies reform, yet delivers nothing.

In conclusion, with all due respect to Casey, and with apologies to Ernest Thayer,

And somewhere men are laughing,
And somewhere children shout;
But there is no joy in Edgewood —
(The) Mighty Task Force has struck out.

On March 5, 1990, Lt. Gov. William Hobby, in conjunction with Senators Caperton and Parker, introduced Senate Bill 31, a comprehensive proposal for addressing the school finance issue.

Although the proposal incorporated significant changes in education, including several provisions for undoing the Perot educational reform efforts of 1984 (which had not brought about any noticeable improvements in the educational system), less than one fifth of the total contents addressed changes in school finance. With complete disregard for my warning about the dangers of Texas duplicating the California effort and expending billions of new dollars without increasing equity, the Hobby plan called for a 3-year $3 billion dollar increase

TABLE 4 *ENRICHMENT EQUALIZATION IMPACT ON DISTRICT FUNDING, YEAR 1*

	Current		*Gov. Plan*	
District	*Weighted*	*Unweighted*	*1st Yr.*	*5th Yr.*
Edgewood	$18.25	$26.05	$19.00	$26.00

in educational expenditures without dealing adequately with the fiscal neutrality and unequalized enrichment issues basic to the *Edgewood v. Kirby* decision.

The entire legislative effort came to naught as the special session concluded without a school finance alternative. For the 15th time since the reversal of *Rodriguez,* the Texas Legislature found itself addressing school finance as the highest legislative priority. In spite of the Supreme Court ruling, legislators concluded with the typical attitude, "That's the best we can do—take it or leave it."

I attribute the continued failure of the legislature to address the equity issue adequately to three formidable barriers: a focus on non-pertinent issues, misinformation in the form of long-held and accepted myths, and traditional sacred cows which legislators were unwilling to move.

The non-pertinent issues, although they may be deemed very important in themselves, proved to be too distracting when attempting to focus on finance equity. Each study group and legislative session having to deal with the mechanics of equitable financing eventually got bogged down on the purpose of education, curriculum content, regulation, accountability, staffing, and special interests. It was not unusual for a committee report or a legislative proposal to contain 10 times as much content on proposed changes not related to the financing of schools than the meager band-aids addressing equity issues.

The second barrier to the formulation of a school finance solution is misinformation. Inevitably, legislators opposed to reform have argued against reform measures on the basis of myths which are erroneous and not based on fact. These myths are addressed in Chapter 1 and include the following:

- Money does not make a difference in the quality of school programs.
- The resources and/or the quality of existing programs in high wealth districts is based on high tax effort.
- The existing system of school finance provides each student in Texas a guarantee of an adequate program.
- The placement of a ceiling or a cap on the most money a school district may expend is an undesirable innovation.
- High expenditures in wealthy districts result in materials and practices which are then provided free or at low cost to low wealth districts.
- Wealth disparities are essential for local control.

The third barrier to the development of an equitable system of school finance are the "sacred cows" of tradition. The following sacred cows continued to impede reform even after it was mandated by the courts:

- The number of school districts in the state and their boundaries
- An elitist system of education which produces a limited supply of skilled labor for limited employment opportunities
- The development of a plentiful supply of cheap, unskilled labor
- A privileged class of non-taxpayers in tax haven school districts
- Absolute local control of schools
- Local payment of capital outlay costs

The 71st Legislature struggled with the unsolvable paradox of devising a school finance plan which met the equity requirement established by the courts, and at the same time preserved the traditional elitist system of education. Early in the session IDRA staff, other reform advocates and school finance experts were invited by Sen. Carl Parker to meet with his Senate Education Committee and provide suggestions for school finance reform. Sen. Parker initiated the meeting with a great deal of frustration, frequently expressing the lack of alternatives available to the legislature. I took issue with this assumption that there were no alternatives available for reforming the system and enumerated a laundry list of legislative options. Sen. Parker and members of the Education Committee would respond to each alternative with a "Yes, but that would . . ." statement indicating that the alternative would change the system and followed by another statement about the undesirability of change. By the end of the meeting it was evident that the frustration experienced by Sen. Parker and the members of the Committee was attributed to their not finding a method of reforming the system which would provide no changes in the system. The paradoxical goal of the legislature was still the development of a plan that would provide equitable funding for all schools, but would still allow high wealth districts to maintain a privileged position.

TAX BASE SHARING

In preparation for our meeting with the Senate Committee, I had been looking closely at equitable alternative plans which the legislature would inevitably have to consider. One such option was tax base sharing.

I felt that eliminating existing school districts, eliminating the taxing powers of local schools, funding education solely with state funds and prohibiting local expenditures above the foundation school program could meet the court's equity requirement, but such plans had serious detrimental effects and did not appear to be politically feasible. The undesirable side effects of such draconian measures could be avoided by neutralizing wealth differences by the creation of intermediate taxing entities, by combining a number of school districts of differing wealth for taxing purposes only. A provision for creating such unitary taxing entities already existed as a permissive process; making it a mandatory process would neutralize wealth differences within the unit. I suggested such a system on May 25, 1970 in my testimony to a legislative committee. (See Chapter 2)

In November 1989, I wrote an article on this concept which was circulated widely but never published. In this article I noted that the concept of state and local shares based on wealth has been the backbone of the foundation school program since its enactment in 1949, although the basis of local wealth had always been the individual school district. Expanding the size of the tax base to a larger unit, such as a county or even a larger intermediate unit made up of two or more counties, would produce three basic advantages: (1) it would neutralize wealth differences among the districts in the unit, (2) it would diminish the cost of equalization to the state, and (3) high wealth going almost untaxed in rich school districts would be shared with low wealth in poorer school districts.

As I was preparing a draft of the article for publication, I attended a meeting with Al Kauffman, the lead attorney for the plaintiff districts. In the meeting, Kauffman presented an almost identical plan for the use of intermediate taxing units for tax sharing purposes. The basic difference between the two plans was that I had used the county as the intermediate unit, and Kauffman had gone further, creating intermediate taxing units comprising several counties. His slightly larger intermediate unit provided even greater wealth neutralization and state equalization aid savings.

In keeping with legislative strategy, I decided not to publish the article on county taxing units. Instead, Kauffman, IDRA staff and other reform advocates met with school finance reform supporters in the legislature and suggested the development of a tax base sharing plan based on intermediary taxing units. The result was "The Equality Plan," a legislative proposal introduced by Sen. Hector Uribe and Rep. Gregory Luna. The Equality Plan, also referred to as the Uribe-Luna plan, used the county as an intermediate unit and featured a two-tiered system of school finance. The bottom tier, similar to the existing Foundation School Program, used the property tax bases of whole counties as the measure of property wealth used to determine state aid. The local contribution was based on an $0.80 tax per $100 valuation on all taxable property in the county, and augmented by the state to fund the basic school program. The second (top) tier allowed individual districts to raise additional revenues above the county level by up to 20 cents of additional tax effort with revenues being equalized by a state-funded guaranteed yield provision similar to the one being used at the time. Other features of the plan included a phased-in facilities entitlement, increases in funding for the foundation school program to compensate for enrichment losses in high wealth districts, and a weighted student distribution system based on student special needs.

I was asked to present the plan at a press conference called by Sen. Uribe and Rep. Luna at the state capitol in Austin on December 6, 1989. In a media interview following the unveiling, I predicted accurately that the plan would be opposed by high wealth school districts opposed to sharing their tax base. I was quoted in the media, predicting that high wealth districts would reject any educational system which provided their students the kind of education that students were receiving in low wealth districts. In the San Antonio *Express-News* I was quoted, saying, "The bitter pill which Texas is going to have to swallow is that kids in school systems that have privileged positions because of the inequitable system are going to have to lose those privileged positions. The reality is you cannot maintain privileged positions at the expense of others who have underprivileged positions."

Alamo Heights School District Superintendent Dr. Charles Slater emphatically expressed the viewpoint of high wealth districts. The *Express-News* article quotes him as being "absolutely and completely opposed to the plan . . . Our feeling in Alamo Heights is that the property tax is our own." Slater expressed the sentiments of high wealth districts in stating, "I'm not opposed to equity and I think every district should be able to spend on a level with Alamo Heights." Consistent with the attitude of high wealth districts, Slater insisted that equity should be achieved by increasing state funding, although he failed to indicate a feasible state tax which would produce the additional $45 billion necessary for the state to equalize all districts at the high wealth district level.

The negative reaction from high wealth districts was anticipated and surprised no one. The reaction from many low wealth districts was equally negative, a consistent attitude of many low wealth districts during the 25 years of school finance reform. A December 6 *Express-News* article[126] provides the following quotes in reaction to the Uribe-Luna Plan: Dr. Galen Elolf, Judson superintendent (below state average in wealth)—"I am opposed to setting caps to provide districts less than already is provided."; Richard Clifford, Southwest superintendent (very, very poor)—". . . opposes 'pulling other people down to bring others up.'"; Jack C. Jordan, Northside superintendent (below average)—". . . an income tax is inevitable."; Dr. Wayne Simmons, East Central board president (below average)—"You can't tie good basic education to dollars because some districts are far more efficient than others."; Herbert Harper, Jr., South San Antonio superintendent (one of the poorest districts in the state)—"I'm opposed to anything that resembles the 'Robin Hood' method."

In general, school superintendents opposed most equity measures, opting for a "leveling up" approach, the appropriation of funds to bring all school districts to the level of the highest expending districts in the state. In December 1989, I wrote a short article praising the altruism in the leveling up approach, but noting the financial and political constraints of such an action:[127]

There appears to be near unanimity among Texas school administrators that a new plan for financing the public schools of Texas should "level up" (increase the amount of funds available for the low wealth school districts), rather than "level down" (decrease the amount of funds available for the high wealth districts).

I have always agreed with this viewpoint, consistently pointing out that the total expenditures for education in Texas leaves a lot to be desired. However, the prevailing viewpoint that no school district should have less money through any type of reform plan is too extreme to support.

Last year the Laureles ISD expended $17,025 for each of its students. Leveling up the system of school finance in Texas, without decreasing the amount of funds available for the richest districts, would cost an additional $42 billion, an increase of more than three times the current cost of education in Texas.

Educators are just as strongly opposed to placing any kind of limit on how much a school district can expend from local taxes over and above the foundation school program. This means that every time the Laureles school district increases the tax rate by one penny, the state will have to come up with $14.5 billion to equalize the system again.

> Although everybody is in favor of leveling up, and no one is particularly interested in limiting expenditures for education, the Supreme Court finding that "the system . . . with local school districts containing unequal taxable property wealth, is unconstitutional . . ." demands a reasonable limitation on leveling up and a reasonable limitation on expenditures for education.

It would be easy, and even tempting, to join my administrative colleagues in calling for increased state expenditures as the sole response to the court order, but it is necessary to act responsibly and realistically. A failure to do so will inevitably lead to a repetition of the failure of House Bill 72 in 1984 when the legislature expended $4 billion on a state finance plan which produced no lasting equalization.

The Uribe-Luna plan struggled through the legislative sessions but never received sufficient support for serious consideration. However, the tax base sharing concept would resurface as a feasible alternative and become law at a subsequent legislative session.

THE MASTERS PLAN

Meanwhile, the governor, an entrenched opponent of tax increases, and weary legislators facing an upcoming election year, haggled over the school funding issue for more than three months in a series of special sessions. The deadlock was finally broken when 250th District Court Judge F. Scott McCown, who had replaced retiring Judge Harley Clark, gave up hope of the legislature coming up with anything and appointed a three-person group to develop a plan which the court would order implemented in lieu of a legislated remedy. The master group appointed in May 1990 was comprised of Master in Chancery William W. Kilgarlin, a former member of the Texas Supreme Court nominated by plaintiffs and plaintiff-intervenors; Associate Master in Chancery Dr. José A. Cárdenas, executive director of IDRA nominated by plaintiffs; and Associate Master in Chancery Dr. Billy D. Walker, director of the Texas Center for Educational Research nominated by defendants and defendant-intervenors.

The masters were sworn in before the court on Tuesday, May 15, 1990, and were to produce a plan for court consideration by June 1. The plan had to provide each school district with substantially equal access to similar revenue per pupil at similar levels of tax effort for the 1990–91 school year.

The masters were provided excellent technical assistance by staff members of the Texas Education Agency and the state comptroller. Judge McCown imposed several constraints on the masters. The plan which they were to develop could require no additional funds other than the $5.2 billion of state funds then being expended in support of the public schools. It had to meet constitutional provisions for taxation and the disbursement of dedicated funds, and it had to be designed for implementation solely for the 1990–1991 school year.

Dr. William Kirby, commissioner of education, was called upon to provide background for the task at hand. In a May 15 meeting, he gave a background of the state system of public schools, Chapter 16 of the Texas Education Code, and the characteristics of the finance system.

Ben Lock from the comptroller's office provided data on state revenues and appropriations which were to be used in support of the masters' plan.

The second working day, the masters heard legal opinions from a horde of attorneys, educators and school finance experts. These included Al Kauffman as attorney for plaintiffs; David Richards and Richard Grey for plaintiff-intervenors; Kevin O'Hanlon (attorney general's office) and Joan Allen (TEA) for defendants; Bob and Earl Luna for defendant-intervenors. Other participants included Dr. Richard Kirkpatrick, Copperas Cove ISD; Frank Medina, San Antonio ISD; Gerard Hoodenpyle, Bedford; Maurice Rawlins, Hercules-Bedford ISD; Dr. Richard Hooker, University of Houston; Dr. Tom Anderson, TEA; Craig Foster, Equity Center; and Richard Arnett from the Texas State Teachers Association.

The topics discussed by the participants either on their own initiative or as requested by the masters included the contractual relationship between the state and school districts, the legal status of school district salary schedules which could be altered by the masters' plan, legal parameters in the reallocation of funds from the Available School Fund, the consolidation of school districts, legislative and judicial powers, due process, state and federal court jurisdiction conflicts, legal concepts of taxation, redistribution of locally collected taxes, the creation of new taxing entities, the definition of "substantially equal," and the legality of a weighted student distribution system.

In my notes from this meeting I conclude that the various parties to the lawsuit were in total agreement on some issues, some disagreement on some issues, and total disagreement on other issues. For the most part, participant arguments reflected their vested interests in the court case. Defendants and defendant-intervenors questioned the legality of the masters concept with attorney Gerard Hoodenpyle stating, "You are getting at the back door what you didn't get at the front."

In spite of the severe time constraints, the masters had little difficulty coming up with a plan that provided full equalization for 90 percent of the students and substantial equalization for the remaining 10 percent at a tax rate of $1.25 per $100 valuation. The two-tiered system based on a fully equalized foundation program and an optional guaranteed yield which was almost equalized, would require no additional state funding.

The plan provided for the distribution of the Available School Fund, derived from the Permanent School Fund, on a county basis as prescribed by the constitution, but the distribution on a wealth basis within each county. Issues of consolidation, district cost differentials and the equalized funding of school facilities were not addressed by the masters within the time constraints imposed by the court, but they recommended additional study and action by the court at some subsequent time.

There was only one strong disagreement among the masters. Dr. José A. Cárdenas argued for a cap on local enrichment funding which would place a limit on the amount of unequalized funds that could be generated by very high wealth districts; Dr. Billy Walker opposed the cap. Judge Kilgarlin refused to side with either of the opposing views, resulting in the submission of two plans one with a cap, and another without the cap, and allowing the court to decide which one would be ordered.

The development of a feasible plan within a 45-day period with accompanying simulations which presented the impact on each of the school districts in the state, exploded 25 years of myths about school finance reform. Most notably, it destroyed the myth that it is impossible to create an equalized system, that it takes years to devise a workable plan, that equalization would require massive consolidation of school districts and a severe loss of local control, and that equalization would require billions of new tax dollars. In 45 days, the masters accomplished what the legislature could not do in 25 years.

There was a circus-like atmosphere at the Travis County Court House the morning of June 1, 1990, when the masters were to present the plan to Judge McCown. The large number of spectators was exceeded only by the larger number of media personnel present. It appeared that each magazine, newspaper, radio and TV station in the state, and many from out of state, was present. It was impossible to walk into the court room to present the plan without bumping into a TV camera or tripping on microphone and power cords.

It is difficult to ascertain what the outcome of the masters' plan would have been had it been implemented. Upon finishing the presentation in the court room, we were surprised by the absence of the media. During the presentation, it was announced that Gov. Bill Clements had developed a school finance plan and was holding a press conference in the state capitol building to present it. There had been a mass exodus of media in the direction of the capitol.

The court-ordered plan would have moved the state very rapidly toward the equitable funding of schools, although the legality of such a remedy would have been immediately challenged, and there is some doubt that it would have ever been implemented. It did serve a very important purpose: the preparation of the masters' plan moved the legislature to the enactment of legislation, as bad as the legislation subsequently proved to be.

The following is the masters' plan as presented to the court on June 1, 1990. It includes the first five attachments: an outline of the plan, the disposition of remaining funds for the 1990 fiscal year, my argument in behalf of enrichment caps, Dr. Walker's argument against it, the reallocation of the Available School Fund and the consolidation of school districts. The attachments providing the financial impact on each school district have not been included.

> **Preliminary Plan of the Master in Chancery**[128]
>
> As directed by order of the court on May 9, 1990, a preliminary school finance plan for the reallocation of previously appropriated funds has been developed for consideration. The intent of this plan is to fulfill the mandate of the court to develop a system that provides each district substantially equal access to similar revenue per pupil at similar levels of tax effort for the school year 1990–91. In the design of this plan, we have been particularly mindful of the constraints under which this plan must operate. These constraints make the creation of a school finance plan capable of providing similar revenue for similar effort for each district extremely difficult. Equally difficult is the design of a school finance system which meets all of our aspirations for a quality financing system of elementary and secondary education. The constraints, however, do not preclude the development of an overall system which can meet the mandate of substantial equity.
>
> *Constraints* The specific constraints under which this plan must operate are financial, legal and operational. First, no new state funding was permitted as an option. The plan must operate within the constraints of the $5.2 billion of state funds currently allocated for the purposes of the Foundation School Program as expressed in Chapters 16 and 21 of the Education Code. Second, the plan must operate within the constitutional provisions regarding property taxation and the allocation of con-

stitutionally dedicated funds for the support of elementary and secondary education. Finally, the plan must exist within the operational constraint of being fully implemented by September 1, 1990, and designed for a one-year duration.

Each of these separate constraints has imposed specific limitations on the available options. The absence of new state funds makes radical redistribution of funds under the existing system necessary, and prevents the use of new funds to cushion the dramatic impact of the redistribution. The problem is additionally complicated by a projected $65 million shortage of state appropriations to fund current laws and formulas.

Arguments have been made in respect to the advantages of a wide variety of tax base sharing, recapture, and property tax classification plans. As valid as such concepts might be from a research point of view, the prohibition of a state property tax, the requirement of voter approval of some local taxes, and the prohibition on the mandatory expenditure of local tax funds elsewhere could serve as insurmountable barriers to these proposals. In a similar manner, the requirement of the apportionment of the constitutionally-dedicated state available school fund to counties on the basis of scholastic population imposes a constraint on the use of these funds.

The operational requirement that the plan be fully implemented on September 1, 1990, makes the use of large-scale consolidation and new research-based formula changes effectively impossible. The potential for reallocation of approximately $1.0 billion of state funds due under the provisions of the current statute, to be allocated over the remainder of this fiscal year, is discussed in Attachment II.

Description The plan which is recommended and described and analyzed in Attachments I, V, VII, and VIII of this report is based on the fundamental directive of the Supreme Court of Texas that states that a constitutional school finance plan must provide each school district with substantially equal access to similar revenue per student at similar tax effort. Within limits, the plan provides local school districts with the ability to supplement this program from local tax funds. Overall, the plan provides a fully equalized system for districts with 90 percent of the students for revenues averaging about $4,500 at a $1.25 tax rate per $100 of property value. Substantial equalization will also occur for many of the remaining districts with 10 percent of the students. This equalized revenue level is the equivalent of a revenue level equal to or above that experienced at the 95th percentile of current revenue level. At existing local tax rates this plan can be implemented with current levels of state appropriations. Local tax rate changes may change entitlements, but existing state mechanisms for proration will compensate for excess demand on state funding as it occurs.

Under this guaranteed yield plan, the state will guarantee an average of about $36 per student in average daily attendance for each penny of tax effort up to $1.25. Under this single-tier concept, school districts will have free choice as to the level of equalized financing available for education in the local community. However, in recognition that the educational system is clearly a state system of public education operating under mandates of statutes and regulations, the plan includes a minimum level of financing of about $2,725 per student, for which a $.75 tax rate will be required for participation by each district qualifying for state aid. This basic level permits continuation of much of the current system of support for the variety of special adjustments recognized by the current Foundation School Program.

This basic plan creates considerable impact on the flow of state dollars. Assuming continuation of both current and proposed minimum tax rates, approximately $540 million of state funds will be reallocated among districts. Any increases in local tax rates up to the $1.25 maximum will increase the magnitude of this redistribution through current proration provisions. Districts with a current tax effort of less than the minimum level of $.75 per $100 valuation will face the option of increasing taxes or losing all state aid. If a cap is also adopted, approximately 59 districts will be required to reduce current revenue levels per pupil. Districts with major increases or decreases in state aid will face a series of complex budgetary and educational decisions which must be made within the next few months.

High Wealth Districts Our discussions regarding school finance equity have often focused on treatment of those school districts with high concentrations of property wealth. These very wealthy school districts with 5 to 10 percent of the students pose a major dilemma in the design of an equitable school finance plan for the state. The property tax constraints mentioned above foreclose many of the potential solutions. The operational constraints make such options as consolidation very difficult choices for the September 1, 1990, implementation date. Leveling up to the revenue access afforded by these very wealthy districts is precluded by the lack of additional state aid.

Within these constraints, the plan offered provides for the maximum possible impact on these districts. First, the statutory allocation of the state available school fund has been modified to remove this source of state aid from all of the high wealth districts, for which this can be accomplished under the constitutional allocation of the state available school fund to the county level. This provision will eliminate all current state support payments from most of the districts currently classified as "budget balanced." Attachment V provides further detail on this recommendation.

Caps Second, the plan offers the court an option for a limited cap to be placed on the ability of these very wealthy districts to raise local revenues. The purpose of this option is to permit the court to determine whether the Supreme Court's opinion, that school districts are not precluded from adding local revenues, was intended to be contingent upon there first being an efficient system in place. In Attachments III and IV, arguments are presented for and against the imposition of a cap. The financial impact of the option is included with accompanying data (Attachments VII and VIII) for the consideration of the court.

The effect of the cap may be summarized as follows. The high level of the cap will mean that only a relatively small number of districts will be adversely affected. The cap does not impact variations in revenue yield for each increment of tax effort. The cap does, however, reduce to some extent the variation in revenue per student between the very wealthy school districts and other districts in terms of available revenues per pupil. The cap provision, if implemented, would provide for a total maximum revenue level equal to the equalized program level plus 10 percent for local leeway, for an average cap of about $4,950 per student. An additional adjustment is provided for high levels of existing debt service.

Additional Issues As noted at the outset, this plan does not cover all of the issues which might be addressed in the abstract creation of an equitable school finance system, even within existing revenues. The operational requirement that the plan be in full effect on September 1, 1990, as well as the short time available for additional research, precludes inclusion of these other issues. Nevertheless, we are concerned in particular over three of these issues and believe that future equity and efficiency may be enhanced by further attention.

The first of these issues is consolidation. There is no doubt that consolidation could, in selected cases, contribute to school finance equity. However, the construction of a proper consolidation plan would require both substantial research effort and a sustained implementation process in order to be effective in both financial and educational terms. For these reasons, a consolidation option is not included in the plan. However, obvious examples of the impact in selected areas exist. Further research should be undertaken by the state to examine the educational and financial impact of reorganization on the development of efficient systems of support for elementary and secondary education. For additional information on consolidation, see Attachment VI.

The second issue deals with the system of formulas utilized by Texas for adjustments for educational programs and district cost differentials. The courts have recognized the permissive use of such differentials. With the exception of the price differential index, for which a research-based option is available, no changes have been recommended to the current series of "weights" used to make adjustments for special programs and district cost differentials. However, the lack of a research base for several of these adjustments, particularly the adjustment for small districts, is a significant concern. Ongoing research studies should provide a basis for future changes.

The third issue relates to the financing of school facilities. The only direct recognition of facility costs which the recommended plan includes is obtained through the inclusion of debt service in the tax rate used for the guaranteed yield program. Again, the absence of a comprehensive research base, together with the inability to provide additional state funds, precludes consideration of a more detailed formula at this time. Existing research efforts are underway to address this problem in the future.

In conclusion, this plan is presented for initial consideration and future efforts of your masters will be conducted in accordance with your order of May 9, 1990.

Respectfully submitted,
William W. Kilgailin, Master in Chancery
José A. Cárdenas, Associate Master in Chancery
Billy D. Walker, Associate Master in Chancery

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Attachment I: Outline and Brief Explanation of School Finance Plan

1. Provides for equalization of 90 percent of the students up to $1.25 tax rate.

   The school finance plan will provide an equalization level for districts with 90 percent of the total students. The remaining 10 percent of the students will be in districts with very high wealth concentrations. These very wealthy districts will receive very limited, if any, state support.
2. Provides for an average equalized spending level of $4,493 per unweighted student at a $1.25 tax rate and an average minimum level of $2,723 per unweighted student at a $.75 rate. The $4,493 per pupil maximum spending level represents the 95th percentile of revenue under current law estimates for 1990–91.

   The actual funding mechanism is based on weighted pupils, with a guaranteed yield of $26.72 per weighted pupil per penny of tax effort. District transportation costs are added to the allotment. The program provides for an equalized spending level of $3,386 per weighted pupil at a $1.25 tax rate, with a minimum level of $2,052 per weighted pupil.
3. Adjusts spending level for tax effort between $.75 and $1.25 on a proportionate basis.

   Districts with a tax effort between $.75 and $1.25 would be guaranteed an amount equal to $26.72 per weighted pupil for each penny of tax effort.
4. Redistributes state available school fund allocations on the basis of financial need within each county compared to current per student allocations.
5. Makes technical changes regarding the Price Differential Index (PDI) and the financing of pre-kindergarten programs. The full impact of the current PDI and formula is applied, without the phase-in from the prior index and formula. Disadvantaged pre-kindergarten pupils in average daily attendance will receive funding through the guaranteed yield program.

   The price differential index change will permit full implementation of the index originally recommended by the price differential index committee to the State Board of Education rather than the current statutory provisions which implement only 50 percent of the impact of the new index. The net effect will be to reduce the percentage of state funding allocated under the price differential index.

6. Maintains other features of the current financing program with regard to special programs.

   The program weights for special education, vocational education, compensatory education, bilingual education, and gifted / talented education would be maintained as in current law. In addition, the formulas for districts with less than 1,600 students would also be retained.
7. Redistributes approximately $540 million in state aid, generally from wealthy and low tax effort school districts to poorer and high tax effort school districts.
8. Causes 128 districts to raise taxes by a total of $14.1 million to meet the minimum tax rate provisions needed to qualify for state aid.
9. Leaves an estimated $102 million in local enrichment above the basic program with caps and $134.2 million in local enrichment above the basic program without caps.
10. Retains current proration features if state funding requirements increase as a result of local tax effort increases.

    The current proration formula dictates that shortages in state funding appropriations will be charged primarily to districts with high wealth and / or low tax effort. Under this plan this formula would be used for proration. The amount to be prorated will depend upon the extent of local property tax increases for the 1990–91 school year. If all districts raised tax rates to $1.25, the amount to be prorated would be approximately $1.5 billion. If districts with low tax effort were to raise tax rates to $1.00, the amount to be prorated would be about $500 million.
11. Includes a level of $4,950 per student plus an allowance for high debt service if a cap is imposed. Under this plan, revenue reductions of $39.7 million would take place in 59 school districts. Four high-tax effort low-wealth districts will be required to reduce tax rates as a result of the cap, but lost local revenue will be offset by increased state aid.
12. While the statistical breakdown accompanying this report may suggest that some poorer districts will actually lose state aid under this plan, a slight increase in their local tax rate will quickly alter that situation. For example, McAllen ISD currently has a rate of $.67 per $100. At a $.782 tax rate, McAllen will lose no money, and thereafter McAllen will acquire state aid at the approximate rate of $750,000 per penny tax increase subject to proration.

Attachment II: Preliminary Statement on Fiscal Year 1990 Funds

Disposition of Funds: No recommendation is made as to the balance of Fiscal Year (FY) 1990 funds which ordinarily would be distributed in June, July, and August pursuant to the law in effect for 1989–90. But, we are cognizant of the following:

1. School districts have adopted budgets and set tax rates for 1989–90 in anticipation of state aid per the established formula. Failure of districts to receive the anticipated aid would work a financial hardship on many districts and could well place some in the untenable position of having adopted a deficit budget.
2. The bulk of school district financial obligations for FY 90 have already been incurred; that is, accrued teacher pay, as well as the pay for most other school district employees, is a definitive obligation of districts that may not be avoided. Encumbrances by districts were based upon a presumption of receipt of the full state aid entitlement.

   Should the court determine to distribute FY 90 funds in a manner other than that already prescribed, the effects of §16.260 (FSP payment schedule) would need to be addressed.

Attachment III: The Need for Limitations on Unequalized Enrichment, José A. Cárdenas, Ed.D., Associate Master[129]

The master has been charged with the responsibility to draw a plan for public school education that provides each school district with substantially equal access to similar revenue per pupil at similar levels of tax effort for the school year 1990–1991.

Court instructions to the master specify that the plan may use all funds available for the Foundation School Program. Unlike the similar task facing the State Legislature, the master does not have tax levying authority for the provision of additional state funds which can be incorporated into a court plan.

The present unconstitutional system contains three tiers of state and local funding. The first tier is the Foundation School Program which generally attempts to equalize. Entitlements under the program are funded by a combination of state and local money, with much of the wealth of school districts neutralized.

The second tier consists of state equalized enrichment funds which the local school district may expend through a limited additional tax effort. Since the state guarantees the yield, the difference between equalized enrichment funds generated by this additional local effort and the state guarantee is made up by the state.

The courts took some exception to these portions of the system in *Edgewood v. Kirby*, but the main criticism was that the combined effects of this generally equalized portion of the system did not provide sufficient funds for a minimally adequate instructional program.

The third tier consists of unequalized enrichment funds which the local school district expends from locally collected taxes over and above the equalized Foundation School Program and the equalized enrichment program. Since districts have widely varying tax bases, the additional tax effort produces varying amounts of additional revenue, from a low of $2.27 in revenue for each additional 1 cent of tax effort in the poorest district, to more than $600 for each additional 1 cent of tax effort in the wealthiest districts.

It was this third tier that was found unconstitutional by the courts. The district court's statement and findings presents disparities based on the effect of unequalized enrichment funds on the total system. Finding number 4 by Judge Clark includes unequalized enrichment funds in determining state and local funds expended by the system. Findings number 8 (revenue disparities), 11 (expenditure disparities), 12 (inadequacy of the Foundation School Program), 13 (disparities in group expenditures) and 14 (disparities in the range extremes) present unacceptable disparities, all based on the impact of unequalized enrichment funds.

The court further notes that the equalized portion of the system does not cover the real cost of education, and virtually all districts spend above the Foundation School Program to enrich the educational program, and that these expenditures (of unequalized enrichment funds) are necessary to provide students an adequate educational opportunity.

The Supreme Court decision accepts the findings of the lower court and again notes disparities in spending, from $2,112 to $19,333, mostly caused by unequalized enrichment. The high court similarly notes that the equalized portion of the program does not cover even the cost of meeting the state-mandated minimum requirements.

It is doubtful that the legislature will be able to find sufficient state funds in order to equalize revenues between low and high wealth school districts without imposing some limitation on the amount of unequalized enrichment funds available to high wealth school districts. Attempts to do so during trial proved fruitless. The allocation of vast amounts of money in equalization under House Bill 72 in 1984 provided little fiscal neutrality, and the reduction in disparities were quickly eroded by increased local enrichment funding.

The erosion of equalization funds after the enactment of House Bill 72 is consistent with the cyclic relationship between equalization funding and unlimited unequalized enrichment. Each attempt to equalize has been followed by increases in local unequalized enrichment and the need for further equalization funding to offset the new disparities.

Neutralizing the disparity in local wealth and providing equal yield for equal tax effort without limitations on enrichment would cost the State of Texas an estimated $45 billion in additional state funding.

It is impossible for the master to equalize district revenues in the absence of massive additional state funds, let alone without any additional state funds.

The only recourse available to the master to make a substantial reduction in the disparities, which makes the existing system unconstitutional, is limiting the unequalized enrichment capacity of school districts in the system.

The reallocation of relatively small amounts of state money within the equalized portion of the system has little impact on the overall disparities in revenues. It is inconceivable that the resulting revenues will provide a minimally adequate educational program in low wealth districts. At best, it constitutes the "band-aid" approach precluded in the Supreme Court mandate.

Hearings conducted by the master indicated a consensus of opinion on the need to address unequalized enrichment through limitations on district enrichment spending. Such an opinion was voiced by attorneys for the plaintiffs, attorneys for the plaintiff-intervenors, attorneys for the defendants, the Texas Commissioner of Education and the Deputy Commissioner for Research and Development.

The limitation of unequalized enrichment funds will not produce an adequate school system, but it will produce an equitable school funding system. It will be the continued responsibility of the Texas Legislature to provide sufficient funds to make the equitable system adequate.

Attachment IV: The Case Against Limitations, Billy D. Walker, Ed.D., Associate Master[130]

It is recommended that tax rate (or tax revenue) limitations *not* be considered as a remedy to the unconstitutional system. There are several arguments against the use of tax limitations:

1. Limitations on taxes address the "expenditure equality" standard of equity, a standard *not* imposed in the *Edgewood* decision. The "fiscal neutrality" or "equal yield for equal effort" principle is *not* addressed by tax limitations in that limitations on tax rates or levies do not affect the yield per unit of effort in wealthier districts. Only additional state aid to "level up" can address the "substantially equal yield" standard in other than a temporary manner.
2. The Supreme Court has stated that local supplementation of an "efficient system" is not precluded. Therefore, there is no constitutional necessity to impose "caps." Since the Supreme Court clearly stated that the legislature was not ordered to increase taxes, it must be assumed that it is possible to frame an "efficient system" within available revenue. This is the court's intent. Given an "efficient system," local supplementation is not precluded.
3. Maintenance and Operations (M&O) tax rate limitations already exist in law. The current limit is $1.50 per $100 of assessed value. Given an average assessed value of 96 percent of true market value, the average "effective tax rate" limitation is currently $1.44 per $100. Many districts are already at or near these limits (see below at 4).
4. Imposition of tax rate limits (or, by commutative mathematics, tax revenue limits) raises constitutional issues, particularly if the limit is less than actual practice in a school district. In effect, the state would be setting the local tax rate. The constitutional prohibition against a state property tax would create the constitutional question. Therefore, it is not clear that even the state legislature, with its authority to pass laws for the assessment and collection of taxes, can impose tax limits at a level less than current practice in a school district.

5. Tax rate or revenue limitations fail to take into account local needs and conditions. For example, in some school districts a local condition such as diseconomy of scale may dictate greater financial need than in another district. There is no single algorithm of need that can be applied by the state.
6. Costs in the Texas system of public education are driven to a large degree by state requirements. That is, it is counterintuitive to place a limit on local taxing authority while the state makes significant spending decisions. If tax rate limits were contemplated, the court would have to ascertain the effects of §16.054 (required staffing ratios and class size limitations), §16.056 (state compensation plan), and §16.057 (career ladder, also in §16.158), at a minimum. State Board of Education requirements would also need to be differentiated; e.g., graduation and course requirements.
7. It is generally acknowledged, even by members of the state legislature, that none of the education reforms implemented since 1984 would have been possible without substantial local taxing leeway. Such leeway allows local school districts to "bridge" the periods between state aid infusions, to operate schools in a consistent manner from year to year, and to meet unique local needs or demands of citizens.
8. If a court-ordered plan is to be a one-year plan for 1990–91 only, enforcement of spending decrements on a one-year basis may prove harmful, perhaps impossible (especially with brief response time before the beginning of the 1990–91 fiscal year), with no assurance that spending limitations will be a long-term state policy. Therefore, local fiscal planning becomes impossible.
9. The extension of state variable ratio matching aid to districts up to $1. 25 per $100 of tax effort (per the attached plan) virtually eliminates unmatched local tax effort and unequalized local enrichment. Only a few districts are affected, containing only a small percentage of the state's pupils. A special provision for these students seems superfluous and does not improve substantially the overall equity of the system.
10. Should the court determine that M&O tax limitations are a viable alternative in fashioning a constitutional system, the court will need to clarify the effects of several sections of current law, such as §20.04(d) (maintenance tax rate limits), §§20.46 and 20.47 (additional voted maintenance tax for buildings), and §20.88 (rollback taxes on agricultural land). Should the court determine that debt service limitations are necessary for a constitutional system, the court will need to clarify several sections of current law, to include §20.04(a), (b), and (c) (debt service tax limitations); §§20.08 and 20.52 (previously voted but unissued bonds); §§20.21–20.27 (revenue bonds); §§20.43 and 20.45 (interest bearing time warrants); and §§20.49 and 20.55 (borrowing).

Attachment V: Reallocation of the Available School Fund

The Constitution of the State of Texas provides for the distribution of the Available School Fund to the several counties on the basis of their scholastic population.

The Available School Fund consists of income earned by the Permanent School Fund and constitutionally mandated taxes allocated to the Available School Fund after deducting the cost of state textbooks.

Under existing law, the Available School Fund is distributed to all school districts in the state on the basis of Average Daily Attendance in each of the school districts. No distinction is made in the distribution among districts of varying wealth.

Very high wealth districts whose taxable wealth precludes receiving state aid through the Foundation School Program receive the same amount of funds as low wealth districts in the Available School Fund distribution which is approximately $303 per student in state assistance through the per capita distribution of the Available School Fund.

In order to increase equitable funding among school districts of varying local wealth, it is desirable to alter the method of distribution within the parameters established by the constitution.

It is therefore recommended that the Available School fund be distributed by the Commissioner of Education to each county on the basis of the number of scholastics in each county as constitutionally prescribed. The county distribution shall be subsequently distributed to the various school districts in each county on the basis of the ratio of taxable wealth of each district to the total taxable wealth of all districts in the county eligible for state assistance for the Foundation School Program.

Districts whose tax base precludes state assistance for the Foundation School Program shall receive no revenue from the distribution of the Available School Fund in that county, except in counties where all districts receive no state assistance for the Foundation School Program. Districts whose taxable wealth entitles them to a state share of the Foundation School Program which is less than the amount of the per capita distribution of the Available School Fund shall receive only that portion of the Available School Fund distribution equal to their Foundation School Program entitlement.

Attachment VI: Consolidation of School Districts[131]
It is recommended that school district consolidation *not* be undertaken as a remedy to the unconstitutional system. While it is a general principle of school finance theory that consolidation of districts into larger units will reduce the wealth disparities between districts, there are pressing arguments against such an action at this time:

1. District consolidation cannot be achieved on a short-term basis, especially not for the 1990–91 year. Issues such as school district governance, voter rights, desegregation orders, and other matters would make any program of school district consolidation a long-term solution.
2. There is no unambiguous research in economics or school finance that reveals that school district consolidation results in more efficient school district operations. That is, while there is a body of research that supports the notion that efficiency is served by unit consolidation, there is a competing body of research that reveals the opposite effect. Each consolidation of school districts must be analyzed on a case-by-case basis to determine if efficiency is served; therefore, no single algorithm is available for use in mandating district consolidation.
3. While it is clear that school district organization (by general law) is a constitutional prerogative of the legislature and thus an alternative available to the court, it is not clear that the court would want to assume this legislative mantle in fashioning school district boundaries. While school districts containing unequal property wealth contribute to an unconstitutional system, such districts are not *per se* unconstitutional. The interaction of school finance equalization provisions with the existing organization of districts is the defined "system" found unconstitutional.

SENATE BILL 1

With Judge Scott McCown holding the masters' June 1 plan in his hand, the legislature quickly enacted new school finance legislation. On June 1, 1990, five days after the presentation of the masters' plan and as the courts were preparing to close down the Texas public school system, the legislature enacted Senate Bill 1, submitted by Sen. Carl Parker. IDRA's reaction to the newly legislated school finance system was, "More money, little change."[132] While providing more funds for schools, the bill was a major disappointment to the successful plaintiffs in the court case. The following article by Dr. Albert Cortez analyzes the new legislation:

> **More Money . . . Little Change—Senate Bill 1: The 1990 Education Finance and Reform Law**
> *Background* In October 1990, the Texas Supreme Court struck down the state system for financing public schools and gave the State Legislature until May 1, 1990, to adopt a new funding approach. The governor chose to delay action on the funding crisis until February 28, 1990, when he called state lawmakers back into a special session to try to resolve the problems cited by the state's high

court. Beyond the legislature's long-standing reluctance to deal with the great inequalities in revenues available to educate children in the state's 1,053 school systems was the widely-accepted belief that any reform would probably entail the raising of state taxes to upgrade the level of the school funding system. These tax-related implications proved to be major obstacles. The governor, an entrenched opponent of tax increases, and weary legislators facing an upcoming election year, haggled over the school funding issue for over three months in a series of special sessions. Only when the district court judge appointed a master to develop its own funding plan did the political leadership break its deadlock. Senate Bill 1 filed by Sen. Carl Parker, the chairperson of the Senate Education Committee, was finally passed on June 6, 1990 and incorporated the legislature's response to the *Edgewood v. Kirby* decision.

After the October ruling in *Edgewood v. Kirby,* school finance reform advocates were cautiously optimistic that the legislature would finally get down to the long-deferred business of structural reform of the state's outdated, unequal funding system. Pre-session hopes for substantive reform and infusion of significant increases of state funding were quickly dashed.

Important proposals that would have made major structural changes to the system were routinely rejected in favor of less threatening alternatives. Following months of confrontations and sometimes bitter political battles, the legislature finally passed Senate Bill 1 which incorporated a plan for a five-year phase-in of increased funding for the state's public schools. While promising some relief for funding-strapped schools around the state, the bill's finance features were a major disappointment to the property poor districts that had successfully challenged the constitutionality of the state funding system. As of this writing, the plaintiffs, led by the Edgewood ISD and the other 12 original plaintiffs, and the plaintiff-intervenors (a group of 50+ districts who also supported the original *Edgewood* suit) were back in Judge Scott McCown's district court challenging the constitutionality of the newly adopted plan. Whether Senate Bill 1 is upheld or ruled unconstitutional, it is highly probable that the legislation's 1990–91 provisions will be allowed to stand for the forthcoming year. This article highlights the key features included in Senate Bill 1 and briefly discusses the implications of the changes for local district operations.

Senate Bill 1's Key Finance Features Touted by its creators as a "significant step in the right direction," IDRA's analysis of Senate Bill 1 led us to the conclusion that the bill incorporates very few significant changes to the state funding system. Rather than changing the structure of the state funding plan, the legislature opted simply to put more money into the system in hopes that the increased level of funding would satisfy the court's demand for equity. The components which were allocated more money under the plan are discussed in detail below.

Basic Allotment The basic allotment, a set dollar amount per student in average daily attendance, is the basic building block for the Texas funding system. In Senate Bill 1 the *basic allotment* was increased from $1,477 per pupil to $1,910 in 1990–91, and to $2,128 starting in 1991–92, and increasing thereafter.

Local Share Requirements In order to better equalize the amount of revenue available to districts to provide a basic education for their children, the state requires each district to pay for a portion of that cost. The *local share* that each district is required to pay is based on the amount and value of taxable property in each district. In 1989–90 the statewide local share was 33 percent and required that most districts levy a tax of about 34 cents to cover that local percentage. In order to defray some of the state's costs for the legislation, the legislature increased the local share from 33 percent to 41 percent starting in 1990–91. This increase in the local share means that most districts will have to levy a tax of 54 cents on every $100 of taxable property in order to receive their state funding for the basic program. The local share tax rate is maintained at 54 cents for 1991–92 and 1992–93, but goes up to 62 cents in 1993–94, and finally to 70 cents in 1994–95.

Guaranteed Yield Allotment In addition to providing support for the Foundation School Fund or basic program, the state allows districts to supplement this basic amount by levying additional taxes. The state in turn "equalizes" the amount of money generated from this extra tax effort, guaranteeing that each district will get a specified amount for each additional penny of effort above the local share tax rate. This assured return per penny of tax effort is known as a guaranteed yield approach and is used in many other states besides Texas. For the 1990–91 school year, the *Guaranteed Yield* portion of the system was revised to guarantee eligible school districts a return of $17.90 per student for each penny of tax effort, up to maximum of 37 cents of tax effort. The maximum tax rate would also be increased from 37 cents to 48 cents in the 1991–92 school year.

ADA Change One of the most significant changes involves the manner in which the state will determine a district's average daily attendance (ADA), a key figure in determining the amount of funding to be provided to each school system. Dating back to House Bill 72, the state had used the best four weeks of two ADA counting periods designated by the state. These two counting periods consisted of four weeks each, one conducted during the fall semester (late October), and a second one done in the spring of each year. The state in turn would use the higher of the two figures as the district's ADA for that school year. Under the new legislation districts' ADA will be determined using the *average monthly attendance of the entire school year.* In order to minimize the impact of the change, the bill provides that the state shall use an ADA figure for each district that is not less than 98 percent of the ADA it would have obtained under the previous 1989–90 definition (best four of eight weeks). This ADA "hold-harmless" is in effect for only one year; however, no further adjustments are provided after 1990–91. Many school systems with migrant pupils, as well as those with higher than average absentee rates will no doubt experience significant (3 percent to 9 percent) reductions in state funding as a result of this change in counting procedures.

Restricted Use of Compensatory Education Funds A more positive aspect of the bill is the requirement that will restrict the way in which state compensatory education funding may be used. Language in the legislation specifies that state compensatory education monies "shall only be expended for supplemental purposes in addition to those programs and services funded under the regular education program of the district from all funding sources." Indirect costs assigned to the program are also limited to no more than 15 percent of the district's total allocation.

Guaranteed Yield Calculations One change which is set up but not mandated by the legislation establishes an alternative formula for determining districts' Guaranteed Yield allotment. Under the old law and up to 1991–92 under Senate Bill 1, the district's per pupil allotment in the Guaranteed Yield portion of the system is based on the number of "weighted pupils" which a district is calculated to have. Weighted student counts are determined by adding up all of a district's allotments (except for one-half of its Price Differential Index [PDI] allocation and its transportation allotment), and dividing that total by the basic allotment for that year. The net effect of this process is to treat the additional revenues delivered by all other components of the state funding system as being the equivalent of "extra students." An example of this would be a district which receives a total of $19,100,000 dollars from the basic allotment *plus* all the adjustments provided by the state funding formulas. Such a district might have 9,000 regular (unweighted) ADA, but the equivalent of 10,000 weighted ADA (its $19,100,000 allotments divided by $1,910, which is the basic allotment for 1990–91). All districts get credit for some additional "weighted pupils" under the state formulas, but the biggest beneficiaries are districts with high costs (small and sparse districts), and those with high concentrations of students with special needs (i.e. those requiring special education, compensatory education, bilingual education, gifted and talented, etc.).

Beginning in 1992–93, if the Foundation School Fund Budget Committee (FSFBC), which is composed of the governor, lieutenant governor, and the Speaker of the State House of Representatives, plus the chairpersons of the House and Senate Education Committees, and the Chairperson of the House Appropriations and Senate Finance Committee *or* the Commissioner of Education (who will be a gubernatorial appointee starting in 1990–91), *do not adopt the cost of education or program cost differentials developed jointly by the Legislative Education Board (LEB) and the Legislative Budget Board, then the amount guaranteed under the guaranteed yield is amount per pupil (ADA) rather than* *the weighted students. A district's average daily attendance is substituted for its weighted ADA currently used in the formula.*

If either the FSFBC or the commissioner refuse to adopt the Cost of Education Index or the Program Cost Differentials developed by studies mandated in the bill, regular ADA will be substituted for weighted ADA in the Guaranteed Yield formula. Should this occur, all districts would lose state funding; but those more impacted would be rural districts, urban school systems, and districts with high numbers of special needs pupils.

Cost Studies The legislation also contains language calling for an array of studies on the cost of a basic education, special programs, facilities, and expenditures in districts identified as "exemplary" in the accreditation process. While these studies will no doubt provide a wealth of information, they will not automatically be incorporated into any of the funding formulas. The bill simply prescribes that the results of these efforts may be adopted by the FSFBC and will be reported to the Commissioner of Education and the legislature.

"Hold Harmless" Provisions Following past legislative practices, the bill incorporates an array of hold-harmless clauses that neutralize or negate the impact of some of the new formulas. In 1990–91 all districts are guaranteed to receive at least as much state aid as they received in 1989–90. To further cushion the effect of the bill, a second clause prescribes a four-year, phased-in reduction in state funding for districts which would lose state funding under the new funding formula.

Phase-in of Increased State Aid To limit the amount of increased state funding which would be provided to property poor districts under the new formula, increases in state aid are also restricted. Under the legislation in 1991–92 a district may receive no more than the total of its 1990–91 state aid figure, plus 25 percent of the difference between its 1990–91 and 1991–92 per pupil state aid entitlement. In 1992–93 that percentage is fixed at 50 percent of the difference between their 1990–91 per pupil state aid and their 1992–93 entitlement. In 1993–94 the percentage increase in state aid is limited to 75 percent of the difference between their 1990–91 state funding per pupil and their 1993–94 state entitlement. As written, the legislation will limit any district whose tax effort is below the $1.18 tax effort which is equalized by the state. A recent interpretation of the bill's provisions also clarified that local districts who raise their taxes above the 91 cent level in 1990–91 are subject to tax rollback provisions if the additional levy results in an increase of over 8 percent.

Postscript: *Within three weeks of Senate Bill I's adoption, lawyers for the plaintiff districts and the plaintiff-intervenor school systems involved in* Edgewood v. Kirby *were once again in court to argue that even with the added revenue the state school funding system remained unconstitutional. At this writing, the Court arguments were being completed, and Judge Scott McCown had committed himself to announcing his decision on* Edgewood v. Kirby II *by sometime in late September or early October of this year. If the judge finds the new bill unconstitutional, he has indicated that he will probably allow the 1990–91 provisions to remain in effect. Even if the finance section is deemed unconstitutional, all other non-finance requirements will remain in place since it is only the bill's funding provisions which were challenged. IDRA will publish an update on* Edgewood v. Kirby *in the next issue of the Newsletter.*

The absence of funding for capital outlay and debt service retirement in SB 1 was a big disappointment. On December 19, 1989, I had sent a position paper to state legislators providing them with information on the status of facilities and debt service which obviously had little impact on the SB 1 legislation:[133]

Capital Outlay and Debt Service Entitlements

The most inequitable aspect of the Texas system of school finance stems from the failure of the state to contribute any money for school facilities. In the past, the entire cost of facilities, including sites, buildings, furniture and equipment has been paid from local funds. The disparities in local wealth among the school districts in the state has led to proportionate disparities in tax effort to provide facilities, disparities in the quantity and quality of facilities available, and in many cases, both.

Past disparities in the provision of school facilities can be seen in a comparison of school district expenditures for facilities in the 1988–89 school year. The 214 districts with taxable wealth of less than $100,000 per pupil expended an average of $345 per student for capital outlay. The 92 districts with local taxable wealth of more than $500,000 per pupil expended an average of $852 per student for capital outlay. Expenditures for capital outlay by all districts in Texas totaled $1,514,532,070 in 1988–89. (Texas Research League, *Benchmarks*, August, 1989)[134]

In the absence of state assistance, most past funds expended for capital outlay were obtained by school districts through long-range borrowing, and through the issuing of school bonds. At present, the bonded indebtedness of all school districts in Texas totals $6,946,325,842, requiring an annual payment of $1,020,504,062 in 1989–90 to retire this debt. (Office of the Comptroller, State of Texas, November, 1989)

Future funding of facilities The development of an equitable plan for school finance as demanded by the *Edgewood v. Kirby* court case requires the inclusion of an equalized system for the funding of school facilities.

Although the concept of state aid for facilities is new in Texas, most states have made such provisions for years. Other states provide such assistance through inclusion of facilities in their foundation school programs, flat grants to districts, and various provisions for obtaining low cost financing. In some states, the entire cost of school facilities is absorbed by the state.

The strict language used by the courts in the school finance litigation rules out limited and sporadic state aid for school construction, and in the absence of extensive state available resources, full state funding of school facilities.

The most feasible means of providing state aid for facilities on an equalized basis is the inclusion of a facilities entitlement in the foundation school program.

Level of funding It is difficult to determine an amount for facilities to be provided in a foundation school program. Past expenditures for capital outlay have varied from district to district and from year to year. In the 1988–89 school year expenditures varied from $0 to $6,797 per pupil, with a median of $161 and an average of $464. Similarly, the range of debt service payments ranged from $0 to $2,554 per pupil, with a median of $184 and an average of $289.

These figures suggest a foundation school program entitlement of at least $400 per pupil for school construction and debt service, with flexibility to accommodate districts with unique needs.

Flexibility of funding There are several unique characteristics of school districts which must be addressed in a formula for the distribution of state aid for facilities. Through inclusion of an entitlement for facilities and debt service in the foundation school program, several of the characteristics may be automatically addressed. For instance, geographic cost differences are already taken into account through the use of the Price Differential Index in the Adjusted Basic Allotment of the Texas Foundation School Program.

Similarly, the wealth of the school district and its ability to provide local support for facilities is automatically considered through the determination of local and state shares. Other characteristics not considered in the foundation school program must be built into the facilities entitlement.

Facilities and debt service entitlement A formula for inclusion of a facilities and debt service entitlement in the foundation school program should include at least the following four elements: a basic entitlement, an adjustment for unusually large district growth, an adjustment for age of existing classrooms and an adjustment for existing bonded indebtedness for past construction of school facilities.

Basic entitlement The basic entitlement allows all school districts an equal amount per student for sites, buildings, furniture and equipment. It should also provide for the acquisition of new facilities, as well as the repair and remodeling of the old.

Growth rate An adjustment should be provided for school districts experiencing an unusually high growth rate, resulting in an extensive need for new facilities. The amount of adjustment required can be calculated by a factor determined through a comparison of the district growth rate over a number of years to the state growth rate over the same number of years.

> *Age of classrooms* The age adjustment accommodates school districts with large numbers of old, dilapidated and obsolete buildings. For practical and political reasons, it is desirable to calculate the adjustment by dividing the district's average age of classrooms by the state's average age of classrooms.
>
> Facilities vary so greatly from district to district and may include such unique features as natatoriums, gymnasiums, playgrounds, and administrative offices and buildings, that it would be wise to limit the adjustment to the age of classrooms, which can be further defined as rooms used mainly for instructional purposes in grades Pre-school to 12; excluding playgrounds, physical education facilities such as gymnasiums, stadiums, natatoriums, etc., and administrative offices.
>
> Since many school districts have temporary and portable buildings which have life expectancies much shorter than conventional facilities, these too should be excluded from inclusion in determining the average age of classrooms in a district.
>
> *Bonded indebtedness* This adjustment provides necessary flexibility for districts which have borrowed extensive amounts in order to provide facilities in the past. The adjustment can be provided through a factor derived by the relationship of a district's per pupil bonded indebtedness to the total state's per pupil bonded indebtedness.
>
> The per pupil bonded indebtedness of some school districts is so high and the debt servicing obligation would require an annual amount in excess of the facilities and debt service entitlement (225 districts made debt service payments in excess of $400 per pupil in 1988–89) that it will be necessary to waive limitations on school district expenditures to allow for the retirement of the debt.
>
> *Conclusion* The failure of the State of Texas to provide any funds for school facilities in the past from state sources, let alone the failure to provide equalized state aid, makes the inclusion of facilities and debt service funding a high priority in the development of an alternate system of school finance.
>
> The inclusion of a facilities and debt service entitlement in the foundation school program must provide flexibility through adjustments in the entitlement for district growth, age of classrooms and bonded indebtedness.

With over $1.5 billion in annual capital outlay expenditures and an almost $7 billion school district debt (the highest in the nation), it was inconceivable that the legislature could devise a school finance plan which did not include capital outlay in its equity provisions.

The ineffectiveness of SB 1 is demonstrated in a study of 1990–91 school year expenditures conducted by *Education Week* and published in 1992.[135] The study provided figures indicating school expenditures in the highest and lowest expending districts in each of the 50 states and the ratio between the two levels. Texas had the highest ratio in the country, 6.75, with a high of $14,514 per student and a low of $2,150, in spite of court orders demanding substantially equal expenditures for all districts.

EDGEWOOD II: DISTRICT COURT

Within three weeks of SB 1's adoption, lawyers for the plaintiff and plaintiff-intervenor districts were once again in court to argue that SB 1 provided so little equalization that it was as unconstitutional as the law it had replaced. Judge McCown scheduled hearings on the second round of school finance litigation, *Edgewood v. Kirby II*.

The hearings were a re-enactment of the original trial, with the only notable difference being that the system in question was based on SB 1 rather than on HB 72. Plaintiffs, plaintiff-intervenors, defendants and defendant-intervenors presented very much the same arguments, witnesses and evidence before Judge McCown that had been presented before Judge Clark.

On September 20, 1990, Judge F. Scott McCown ruled the new system of school finance unconstitutional. This should not have been much of a surprise to anybody familiar with school finance, since the hastily approved SB 1 ignored district and Supreme Court findings and produced nothing new or in keeping with the previous findings in the court case.

Immediately after the court ruling, I wrote and published an article in the October issue of the *IDRA Newsletter,*[136] analyzing the decision, identifying the basic problems of SB 1, and taking to task the Texas Education Agency and the Texas Legislature for its premeditated failure to comply with the wishes of the courts:

> At a press conference hastily assembled in the Edgewood district to announce and respond to the September 25, 1990, court decision in *Edgewood v. Kirby,* members of the media noted a lack of enthusiasm on the part of Demetrio Rodriguez. Although elated over the court decision, Mr. Rodriguez expressed disappointment over the length of time it has taken the state of Texas to respond to the inequities in the current system of school finance. Demetrio Rodriguez' children have all graduated from the public schools, making reform efforts moot as far as they are concerned, but he now has several grandchildren enrolled in the schools of the Edgewood district, and he cannot help but wonder if they too will go through the constrained educational programs before the state provides an equitable system of schooling.
>
> Over the past 22 years Demetrio Rodriguez has experienced elation over the initial victory in *Rodriguez v. San Antonio ISD,* a bitter frustration over the 5-4 reversal in the U.S. Supreme Court, optimism in the state district court decision in *Edgewood v. Kirby,* disappointment in the reversal in the appellate court, elation in the Texas Supreme Court upholding of the district court decision, and a weary and tempered celebration over the recent court decision finding the new law equally unconstitutional.
>
> Certainly Education Commissioner William Kirby's double-whammy announcement that the Texas Education Agency plans to appeal the decision and that, "The good news is that there will be no changes for the 1990–91 school year," did little for Demetrio Rodriguez' hope that his grandchildren will benefit from a quality educational program which was denied to his children.
>
> The announcement that the newly legislated system of school finance (Senate Bill 1) was just as unconstitutional as the previous system was greeted with disbelief by a number of public officials including the governor, key legislators and the commissioner of education. It is difficult to understand their surprise since both the district court in *Edgewood v. Kirby* and the Texas Supreme Court made detailed criticisms of the existing system. Having chosen to ignore the findings of fact and the direction provided by the courts, it is not so surprising that the district court has ordered them back to the drawing board.
>
> In October 1989 the Supreme Court noted that past efforts by the legislature had focused primarily on increasing the state's contribution. This the court found unsatisfactory and warned the state that, "more money allocated under the present system would reduce some of the existing disparities between districts but would at best only postpone the reform that is necessary to make the system efficient." The Supreme Court then clearly set the parameters for change in extremely plain language: "A band-aid will not suffice; the system itself must be changed."
>
> After dillydallying through four special sessions of the legislature, the lawmakers finally produced a bill at the 11th hour; a bill which, contrary to the direction provided by the courts, retained all the undesirable elements of the old system, reformed nothing, and simply allocated additional money to minimally reduce some of the existing disparities.
>
> Having been told that a band-aid would not suffice, the legislators and the governor finally came up with a band-aid and a very poor one at that. Although $528 million in additional state aid was provided, almost $160 million of that amount went to higher-than-average wealth school districts. Much of the increase in funding came at the expense of the local property tax with the increase of the local share of the Foundation School Program going up from 33.3 to 41 percent. Low wealth school districts were pushed toward even higher local tax rates by dangling the carrot of maximizing future state assistance.
>
> The Texas system of school finance has four elements. Two of them, the Foundation School Program and the Guaranteed Yield are generally equalizing; and two of them, the Per Capital Distribution and the Unequalized Enrichment are unequalizing. It is ironic that all changes in the sys-

tem provided in Senate Bill 1 addressed the Foundation School Program and the Guaranteed Yield in attempts to make them slightly more equalized and ignored the two elements which caused the system to be found unconstitutional. As stated in the September 1990 decision, "Unequal enrichment . . . was the objectionable feature of the system." This objectionable feature was not addressed by the legislature.

In its review of Senate Bill 1, the district court concluded, "Senate Bill 1 is not the dramatic structural reform that the Supreme Court foresaw would be required."

In the Supreme Court decision, the test of equity in the system of school finance is based on the correlation between a district's tax effort and revenue. The decision clearly states, ". . . districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort."

In its continuing efforts to defend the existing inequitable system, the state of Texas chose to interpret this test of equity as districts having "equal access up to the point that revenue available to one district but unavailable to another district makes little or no real difference in educational opportunity." An assumption has been made by the state that equity has to be provided only within the Foundation School Program.

While the courts have not restricted equitable treatment to the basic program, the argument is moot, since the Supreme Court noted that, ". . . the Foundation School Program does not cover even the cost of meeting the state-mandated minimum requirements."

The district court's analysis of Senate Bill 1 shows that the new basic allotment adopted by the legislature is substantially below the amount deemed minimally adequate in state research.

Although in the court hearings the attorney general's office claimed that Senate Bill 1 was carefully orchestrated to respond to the demands of the Supreme Court decision, it is obvious that this hodgepodge of compromise ignored significant aspects of the decision. This may be attributed to important issues falling through the cracks in the preparation of the legislation or, more likely, that perception is selective, and the legislature chose to ignore important aspects of the court order. Three important exclusions were found in Senate Bill 1.

The first exclusion is in the number of children which are to be included in the equalization process. Equalization in Senate Bill 1 excluded 5 percent of the children in the state in districts with total taxable property of about $90 billion, or 15 percent of the state's total property wealth. Even this exclusion is extremely conservative since the 95 percent of children for whom the system has been "equalized" is computed under the assumption that *no further increases in unequalized enrichment will be made by any of the high wealth school districts in Texas.* Such an assumption is extremely naive, since all past attempts to equalize since 1950 have been followed by increased unequalized enrichment which has not only eroded the equalization effort, but has led to larger disparities than those that existed prior to the equalization effort.

Restricting the range of students not guaranteed an equitable education is a tactic frequently used by the state in the past, but never accepted by the courts. For years the state argued that if you eliminate 5 percent of the children in the lowest district wealth category and 5 percent in the highest wealth category, the disparities are not too great. The courts have had a difficult time accepting this argument which states that if you eliminate the extremes, the extremes are not very extreme.

Although it is generally recognized that drastic measures must be taken to equalize revenues for the children in budget balanced school districts that receive no state aid, such children constitute only 2 percent of the scholastic population of the state. Senate Bill 1 does not even equalize school revenues for children in high wealth districts receiving state aid and within the parameters of relatively easy equalization.

The second exclusion in Senate Bill 1 is in the portion of revenues equalized by the system. As stated previously, the Foundation School Program does not cover even the cost of meeting the state-mandated minimum requirements. The Supreme Court noted that "the basic allotment and the transportation allotment understate actual costs, and the career ladder salary supplement for teachers is underfunded." Additional funds for transportation and career ladder were not provided in Senate Bill 1, and the basic allotment was less than the minimum amount determined by state studies.

The third exclusion in Senate Bill 1 is funding for school facilities and debt service. Unlike most of the 50 states, Texas does not provide state aid for facilities, making this type of expenditure the most unequalizing feature of the state system of school finance. This conspicuous absence was noted in the Supreme Court decision.

The legislature excluded any funding for this purpose other than to point out that foundation funds and optional funds in the guaranteed yield can be used for providing facilities and for servicing bonded indebtedness. Since it has been demonstrated that existing available funds are inadequate to support a minimally adequate instructional program, it is doubtful that many school districts will have surplus funds to apply to capital outlay and debt service.

Expenditures for these areas are not so trivial as to be considered in such a trivial manner. Annual expenditures for capital outlay total $1.5 billion; annual expenditures for debt service total $1 billion.

In the recent district court opinion, Judge F. Scott McCown states, "With regard to facilities, the court's criticism [illegible] Senate Bill 1 is two-fold. First, there is no plan. Instead there is merely a study. The state's defense to this criticism is that it does not know what to fund until it determines what is 'necessary.'" The second criticism is that, "The state does not plan to make structural changes so that each district has substantially equal access to funds for facilities, instead the state only intends to provide funds for 'adequate' facilities. This approach is no more acceptable for facilities than for operations. The test is equity, not adequacy."

Considering these three omissions and the glaring inadequacies of the remainder of Senate Bill 1, it is difficult to understand how the governor, the legislature and the Texas Education Agency are shocked and disappointed in the action of the court.

In his prepared statement on the recent decision, Commissioner Kirby states, ". . . our lawmakers did a good job of improving equity in our school finance system and providing more opportunities for children in property-poor school districts." Evaluating the work of the legislature involves a value judgement. Senate Bill 1 may appear "good" to a resident of Highland Park ISD in Dallas. For Demetrio Rodriguez' grandchildren in the Edgewood ISD, the work of the legislature was definitely not "good." After 22 years of litigation, the commissioner should begin to recognize that neither the plaintiff school districts nor the courts are seeking improved equity or more opportunities, they are seeking the constitutionally mandated equality of educational opportunity and an equitable system of school finance.

After 21 years of continuous involvement in the search for an equitable system of school finance, I take issue with only one sentence in the 52-page opinion provided by Judge McCown on September 25, 1990. Judge McCown concludes, "These questions show that the state still does not understand the evil that the court insists must be remedied."

This may have been true in 1973 during the first session of the legislature following the United States Supreme Court reversal of *Rodriguez v. San Antonio ISD,* when both legislators and educators were similarly naive about school finance and the disparities in the system. After 20 years of school finance equity being the dominant issue in each legislative session and most special sessions in between, the failure of the legislature to act cannot be attributed to a lack of understanding of the problem. The Texas Legislature has refused to act because the legislature and the educational leadership of this state wish to perpetuate an inequitable school finance system which provides a privileged position for privileged children in privileged school districts, and a privileged position for privileged taxpayers in privileged school districts.

Children in low wealth school districts are composed primarily of minorities. The poor, immigrants and migrants are perceived and treated as low-valued stepchildren undeserving to share in the economic, social, political and legal bounties of our state and nation.

In the same October 1990 issue of the *Newsletter,* Dr. Albert Cortez presents a more scholarly analysis of Judge McCown's ruling:[137]

In June 1990 the Texas Legislature passed Senate Bill 1, legislation which was supposed to address the Supreme Court mandate in *Edgewood v. Kirby*. One month after its adoption, plaintiffs and plaintiff-intervenors returned to court to challenge the constitutionality of the new law, arguing that the legislation fell woefully short of achieving the level of equalization prescribed by the court. The judge convened a hearing on the case in July and heard two weeks of testimony on the legislation and assessments of its impact. Approximately six weeks after the hearing, Judge McCown issued his opinion and judgement on the case declaring that, "Senate Bill 1 . . . does not establish and make suitable provisions for the support and maintenance of an efficient system of free public schools as required by Article VII, Section 1, of the constitution of Texas, as interpreted by the Supreme Court in *Edgewood v. Kirby* . . . The Texas school financing system remains unconstitutional because it continues to deny school districts . . . substantially equal access to similar revenue per pupil at similar levels of tax effort." The court gives the legislature until September 1, 1991, to enact a constitutional plan.

The Court's judgement was accompanied by a 52-page opinion which outlined in detail the flaws identified in Senate Bill l's finance provisions and the basis for the conclusions reached in its decision. A summary of the court opinion in the case follows.

In his opening paragraphs Judge Scott McCown clarifies that, "The question before the court is whether the Texas school finance system, as modified by Senate Bill 1, is efficient," with the test of efficiency based on whether it (Senate Bill l's finance provisions) gives each school district "substantially equal access to similar revenues per pupil at similar levels of tax effort." The judge proceeds to emphasize that the system as modified by Senate Bill 1 is presumed to be constitutional, and that the burden of proof of unconstitutionality was placed upon the plaintiffs. He further specifies that, "the court attempted at each juncture to construe Senate Bill 1 so as to make the financing system constitutional. Despite the cautious and measured approach to his assessment, the judge reveals that, *"In the end, however, the court reluctantly came to the conclusion that the system remains unconstitutional."*

Historical Background To help explain the rationale for his decision, Judge McCown provides a historical backdrop explaining the workings of the state's complex school funding system. Drawing upon testimony provided by Dr. José A. Cárdenas of the Intercultural Development Research Association and other experts in the case, he explains that the system consists of three tiers: a basic or foundation program as the first tier, an equalized guaranteed yield system as the second tier, and an unequalized local enrichment component as the third tier. The judge observes that the Foundation School Program did not even cover the cost of meeting the state-mandated minimum requirements, and even after the creation of the guaranteed yield program districts found it necessary to spend additional local money. "Unequal enrichment from tier three was the objectional feature of the system." He further notes that disparities in revenues resulted even though the property poor districts exerted *greater* tax effort than the rich school districts.

Shifting to analysis of Senate Bill 1 itself, Judge McCown begins with an overview of the law's merits. He first considers the state's oft-stated argument at the trial that the legislation was "too new" at the time of the challenge, that time was needed to allow critics to determine whether the plan would truly achieve an equitable system after its five-year phase-in. The court noted that:

> A plea for time is always decided on by looking at the particular plan . . . a plan might appear to have merit, but needs time to prove itself. Or a particular plan might be so vague as to be no plan at all, in which case time is not needed, a plan is needed. Or a particular plan might be readily identifiable as one that will probably fail. *Senate Bill 1 falls into the latter two categories. Parts of the senate bill are so vague as to be no plan at all. Parts of the bill are destined to fail. The court finds no purpose in waiting to assess Senate Bill 1. From what is known today, even assuming the best, the court confidently finds that Senate Bill 1 will not be provide equity. Waiting one to five years for the obvious to prove true only postpones much needed reform.*

Following his general observations of the bill's merits, the judge proceeds to a more specific analysis of the legislation's shortcomings or "flaws." He first notes that the bill is, "Not the dramatic structural reform that the Supreme Court foresaw would be required. . . ." That the legislation "is yet another attempt to ameliorate the disparities in local wealth through an equalization plan with a little more money in the tradition of House Bill 72 in 1984, and Senate Bill 1019 in 1989."

The court observes that the system remains *inefficient,* noting that Senate Bill 1, "begins by excluding 174,182 students in districts with a total taxable property wealth of about $90 billion, or 15 percent of the state's total taxable property wealth."

Statistical Significance A critical portion of the state's defense was based on its argument that the equity in the system would be monitored and measured using objective tests of "statistical significance." Reviewing testimony presented by the state's own witnesses, the court finds, however, that, "the term 'statistical significance' does *sound* like it means something precise, but in fact it does not." Referencing the state's own witness the court observes, "What was disturbing about Dr. Bernes' testimony was his candid admission that the term 'statistically significant' has no meaning. How large is large? How small is small? These are questions that the science of statistics does not answer. They are also questions that Senate Bill 1 does not answer."

Exclusion of Revenue Analyzing Senate Bill I's "fine print," the court cites Section 16.001(C) (2) in the bill which says that, "the level of state and local revenue for which equalization is established shall include funds *necessary* for the *efficient* operation and administration of *appropriate* educational programs and the provision of financing for *adequate* facilities and equipment." The judge notes that, "if the specified level were a floor, meaning that equity will be guaranteed at an adequate level, it would be a reassuring promise." However, he concludes that the "limits" specified in this statement operate as a ceiling, meaning that equity will only be guaranteed to a so-called adequate level, i.e. to an arbitrarily established level of qualified funding." The state argued that the actions taken in setting the "qualified level of funding" are subject to review under the Administrative Proceedings Act. But the opinion notes that:

> ". . . judicial review is pointless because (1) the board only makes recommendations to the legislature, and (2) by the time the process of judicial review is concluded, years would have passed." The judge notes that the critical point is that the Legislative Education Board is authorized and commanded to *exclude* certain revenues from its calculation [of an adequate program]; thus, equalization is provided up to some supposed level of 'adequacy' rather than up to what the property rich districts actually spend. . . . Thus, *Edgewood* continues to be a debate about adequacy and equity. The legislature continues to try to define adequate as something less than the elected school boards charged with that responsibility to educate our children say they need to do a good job."

The judge notes that, "the state gives no thought to prohibiting rich districts from spending their extra money . . . In short, what the rich districts spend creates educational opportunities for their children that are denied the children the poor districts. Under Senate Bill 1, the rich districts are left rich, the poor districts poor. The rich districts can still raise more revenue through local property taxes that the poor districts cannot. The poor will receive state funds to equalize the difference but only up to a bureaucratically and legislatively determined 'adequacy,' not the level of real difference in educational opportunity."

Continued Unequalized Enrichment A critical aspect of the court hearing on Senate Bill 1 involved the plaintiffs' charge that the legislation did nothing to address the disparities created by unequalized local enrichment, the third and most problematic level of the Texas school funding system. The judge concluded that Senate Bill 1 "does nothing to equalize or restrict use of the third tier. The third tier will continue to make available enormous wealth for property rich districts that will not be matched by the state for the property poor districts." He then cites numerous examples which show significant differences in the return for each penny of effort that will be derived by poor and rich districts for each cent of tax effort, above the $1.18 tax level which is equalized by the state. The state had argued that unequalized enrichment was permissible under the Supreme Court's original ruling in *Edgewood v. Kirby*, as long as tiers 1 and 2 were equitable and adequate. Judge McCown *rejects* that argument, citing the Supreme Court's final judgement which stated:

> "Nothing in this judgement is intended to limit ability of local school districts to raise and spend funds for education greater than that raised or spent by some or all other school districts, *so long as each district has available, either through property wealth within its boundaries or state appropriations, the same ability to raise and spend equal amounts per student after taking into consideration the legitimate cost differences in educating students."*

He then expands on that point with the following:

> *"The court thus contends that a fiscally neutral system will have disparities in revenue spent per pupil, with amounts based on community priorities . . . The point of Edgewood however, is that the differences should not be the result of disparate wealth . . . To have to accept the state's position is to adopt the standard of adequacy rather than equity . . . If that is what the Supreme Court meant, it would have reversed rather than affirmed this court."*

The False Hope of Reaching Adequacy One of the arguments posited by the state was that both adequacy and greater equity would be achieved as Senate Bill l's level of funding was increased over time, bringing the level of revenues of poor districts closer to those of their richer counterparts. The court concludes that this expectation is a "false hope" for three well-established reasons. One reason given is that "districts are known to compete against one another . . . as the poor benefit from the increases in tier 1 and tier 2, those districts with access to tier 3 (unequalized enrichment) will use it to stay ahead." Testimony presented at the trial clearly supported this assertion. The second reason why increased funding provided in Senate Bill 1 is seen as raising false hope lies in the court's observation that, "state funding has historically lagged behind inflation." He notes that, "as costs go up, poor districts who rely on tier 1 and 2 funding will be squeezed, while those districts which have access to tier 3 will use it to meet increased costs." The third and final reason is that, "given the fact that the state has so many unmet educational needs, and spends so little on education, that it is safe to predict that those districts with access to unequalized enrichment will continue to supplement the state's inadequately funded program."

Lack of Facilities Funding The court next focuses on Senate Bill 1' s provisions regarding funding of local school facilities. After recognizing the Bill's provisions for a statewide study of facility needs and a modest one-year fund for funding, he notes that, "The root problem remains. Some districts have vast local wealth to build school facilities, others do not." The court finds that, "With regard to school facilities there is no plan. Instead there is merely a study." Chiding the state's defense that the study is required to determine what is necessary or adequate he states . . . "This approach is no more acceptable for facilities than it is for operations. *The test is equity not so-called adequacy."*

Alternatives Following his critique of the flaws incorporated into the senate bill, Judge McCown turned his attention to alternatives to the present funding methodology. During the trial the state argued that the new law had to be measured against the alternatives . . . then proceeded to paint all other options as either more undesirable, politically unacceptable, or themselves unconstitutional, thus suggesting to the court that the recent legislation must be accepted as the only viable alternative. The judge rejected this argument and states:

> To this conclusion the court has two responses. To begin with, the court has more hope for the leadership and ability of the governor and the 72nd Legislature. Perhaps they can develop a plan for full state funding that provides adequate dollars and retains appropriate measures of local control. Perhaps they can develop popular support for consolidation. Perhaps they can solve the technical issues regarding tax base sharing, or secure a constitu-

> tional amendment to allow tax base consolidation. Perhaps they can develop an altogether new plan. It is not yet time to say we can do no better for the children of Texas . . . Beyond that, if an equalization bill without caps is the only alternative, *Senate Bill 1 is not an acceptable version.*

Throughout the trial Judge McCown expressed sincere concern for the implications which any alternative had for state funding requirements. In the end, however, he concludes that children and the achievement of equity are more paramount concerns. He notes that:

> "A true equalization plan *is* expensive for the state. In a true equalization plan the state subsidizes some *waste* through the maintenance of small districts and *subsidizes some extravagance* by the concentration of property wealth in certain rich districts . . . the state funds through state taxes what could be *funded from local taxes.* If the legislature chooses these financial inefficiencies . . . it is its choice. The critical point to understand is that a true equalization plan does not create inefficiencies, it merely exposes them . . . For decades the inefficiencies have been subsidized by the property poor districts and their children who have gone without so that others could have more. Forcing the poor to subsidize these inefficiencies is not a choice available to the legislature . . . Providing for the rich and not the poor is likewise not an option for the legislature."

Commenting on the degree of equalization that must be achieved to have a constitutional system, the court notes that the test of fiscal neutrality (the measure of the relationship between wealth and revenue) is "not to be applied rigidly". . . as long as the plan provides for substantially equal opportunity, such a plan remains an option for the legislature to draw reasonable lines. Unfortunately, no specific level is offered to guide future legislative efforts at defining reasonableness. It is worth noting that in an earlier segment of the decision the court states that "It is startling to learn that the Texas district at the 95th percentile of revenue per student spends less than the national average per student. The district at the 95th percentile spends $4600 . . . while the national average is $4800 per student."

In his closing segments the judge deals with plaintiffs' concern regarding the state's new ADA calculation methods, and their argument that the state is required to give education top priority in the budget-setting process. Regarding the ADA issue, the court suggests that since the impact of the new counting methodology seems to affect rich and poor districts in a similar way, it is not perceived as an equity issue . . . moreover, he expresses a concern that "rather than tinker with ADA, which might only invite other attacks on funding formulas, this court continues to insist on *fundamental change to produce equity.*"

The court subsequently rejects plaintiffs' contention that education should be given top priority in funding. The court argues that the constitution places many funding duties on the legislature, which must be decided pursuant to the legislative process of appropriation in accordance with Article VIII of the State Constitution.

Concluding Points The judge concludes his opinion with the assertion that, "In its judgement the court has done nothing more than declare that the Texas school financing system remains unconstitutional." It clarifies that it is refraining from immediate intervention, citing the problems with cutting off all funding, and/or implementing its own plan. Instead the court states its current preference of giving the forthcoming legislature one final opportunity to come up with a constitutional system. He closes his opinion, however, with a clear warning. *"Having stated the case for the continued deference to the legislative and executive departments, the court wants to say loudly and clearly that it can and will not forebear drastic action after September 1, 1991. . . . A remedy is long overdue. . . . Given the complexity of creating an efficient system staged for implementation after September 1, 1991, is probably a necessity. . . . The time over which implementation is to be accomplished, however, must be reasonable. Any plan must also be sufficiently detailed so that its likely efficiency can be assessed on September 1, 1991. A vague or incomplete plan is no plan at all. If the Legislature continues to abdicate its responsibility, or if the governor impedes legislative action, then upon appropriate motion and proof the court will act."*

EDGEWOOD II: SUPREME COURT

Consistent with his support of high wealth districts, education commissioner William Kirby followed through with an immediate announcement that Judge McCown's decision would be appealed to the Texas Supreme Court. The court heard arguments in November 1990 and presented an early decision on the constitutionality of SB 1 on January 22, 1991.

Still reiterating the reluctancy of the courts to usurp the responsibility of the legislature by prescribing a school finance plan, the Supreme Court did narrow the parameters for an acceptable alternative. The court similarly shortened the time lines with a mandate that a new plan be enacted by April 1, 1991, and implemented on September 1, 1991, the beginning of the 1991–92 school year.

The following guidelines for legislative action were included in the January 22, 1991, Supreme Court decision:

- The *system* of funding education must change. Band-aid approaches such as SB 1 with 30 percent of the new funding for reforming the system going to high wealth districts would not be acceptable.
- The reform legislation must address the causes of the problem; eliminating gaps between rich and poor school districts rather than diminishing the impact of existing differences.
- Tax revenues from local sources must be equalized.
- Taxpayer equity must provide that all property in the state be subjected to a similar level of taxation.
- The new system must provide complete equity for all students. Legislation which provides 90 percent to 95 percent of the students is not acceptable.

The Texas Supreme Court supported the lower court's stand on the prerogative of the legislature to change district boundaries and consolidate school districts. One and one-half pages in the high court decision (*Edgewood*) II were dedicated to the legality of a tax base sharing plan such as the Uribe-Luna bill rejected during the past special sessions of the legislature.

CHAPTER 10

SENATE BILL 351 AND *EDGEWOOD* III

In the following excerpts from my article in the February 1991 issue of the *IDRA Newsletter*, I describe the task awaiting the 72nd Legislature in devising a new system of school finance:[138]

> The legislature now faces the task of designing a new system of school finance within the constraints imposed by the Supreme Court. Assuming that the legislature will opt for a strategy which produces the least change in the system, as has been the case in the past, it has reached the bottom of the barrel in legislative options, with the tax base sharing plan being the only option which will preserve existing school district boundaries.
>
> The new guidelines support the creation of county-wide taxing units which will distribute revenues to school districts within the county on an equalized basis in support of the foundation school program, with the state continuing to provide sufficient funds to meet the level of adequacy to be established by the State Legislature. The level of funding may include a basic mandatory amount and an additional state-equalized permissive or enrichment amount. Both levels will be constrained only by the amounts that the local district and the state wish to invest in the system. Unequalized enrichment by local school districts over and above the amount provided in the equalized plan will no longer be permitted.
>
> Since there are a few counties that will produce more revenues than those required in support of the equalized program, a new tax sharing plan will have to consolidate these counties with adjacent counties to form taxing units to produce the same or less tax revenue than that which is required in support of the equalized system.
>
> Although the county unit is the smallest unit politically feasible for tax base consolidation, the legislature may opt for larger units which can neutralize the disequalizing high taxable wealth of rich counties.
>
> This tax base sharing option facing the legislature not only provides an equitable system, it also provides a windfall for the state. Tax revenue currently lost in high wealth districts with tax rates as low as 16 cents per $100 valuation will provide revenues for low wealth school districts currently heavily subsidized by the state.
>
> The only losers under such a system will be very high wealth school districts which will lose their privileged position of having almost unlimited funds with a minimum tax effort.
>
> Proposed legislation has already been introduced which calls for a statewide property tax in support of an equalized system. This proposed legislation is identical to the tax base sharing system, except that the number of consolidated taxing units has been reduced to one—the entire State of Texas.
>
> The problem with the statewide property tax proposal is that its implementation is rather questionable, with its realization being dependent on a statewide voter approval of constitutional amendments, and the impossibility of such a vote being taken prior to the April 1 deadline imposed by the Supreme Court.
>
> There can be little sympathy for the reaction of legislators to the timelines established by the courts. The Texas Legislature has featured school finance reform as the dominant issue in each legislative session since 1973 and has consistently failed to come to grasps with the inefficiencies of the system. Backed into a corner by the courts in 1990, the legislature again sought loopholes and pro-

> duced a band-aid bill which not only failed to produce educational equity, but actually exacerbated the differences between high and low wealth districts.
>
> It is apparent that the courts have had enough of "voodoo" legislation which appropriates $540,000,000 for "school finance reform" (SB 1), but with $160,000,000 of the appropriated amount going to high wealth school districts. It is apparent that the courts have had enough of new "equalized" systems which allow high wealth school districts to disequalize with high unequalized local wealth. It is apparent that the courts have had enough of a legislature that cannot move down the road of equitable funding of schools because the road is blocked by sacred cows which the legislature refuses to touch. It is apparent that the courts have had enough of a state school finance system where all children are equal, except that some children are more equal than others.
>
> The bag of legislative tricks is almost empty. Within two months the legislature will have to bite the bullet and enact a new and equalized system of school finance. The only remaining options are to have the courts do it for them, or to close the school doors to 3.3 million children.

The 72nd Legislature had been given slightly more than two months to come up with a new system of school finance. Low wealth school districts looked forward to Gov. Ann Richards providing the impetus for reform legislation, since school finance equity had been a key element in her campaign and she had received extensive support in low wealth districts. Unfortunately, her education advisors failed to develop anything other than more of the same band-aid treatment of the problem. Reform advocates were invited to Austin for the presentation of the governor's plan. It was a vast improvement over the existing SB 1, but, as was so often the case in reform legislation, the governor's plan failed to address unlimited local enrichment, therefore providing limited equity if enacted, and the erosion of equity as high wealth districts augmented local enrichment.

Gov. Richards seemed to resent the extensive disappointment of reform advocates, removed herself from the playing field, and was mostly a bystander in the effort to enact an equitable system of school finance.

TAX BASE SHARING: SB 351

The April 1, 1991, deadline imposed by the district court in *Edgewood v. Kirby* forced the legislature to act earlier in the 72nd Session than was the norm. Just 30 minutes before the Texas Supreme Court was to begin hearings which could have led to the closing of the schools, Gov. Ann Richards signed Senate Bill 351 into law.

Sen. Carl Parker had resurrected the Uribe-Luna Plan and introduced Senate Bill 351, based on intermediate units for tax base sharing. After bitter legislative battles and a series of compromises, SB 351 was enacted into law.

Counties with no high wealth districts were united with higher wealth counties to produce 188 county (or multiple county) education districts (CED) for taxation and revenue sharing purposes. The bill required every county unit to levy a minimum tax rate to generate the county unit's local share of the basic educational program. Revenues from the county unit tax were re-distributed equitably to all school districts in the unit. The minimum tax rate was set at 72 cents per $100 valuation for the 1991–92 school year, 82 cents for 1992–93, 92 cents for 1993–94, and $1.00 for 1994–95.

The sharing of the tax base in the county units reduced the state tax base disparity from 700 to 1 among the 1,056 school districts to 6 to 1 among the 188 newly created county units.

New state funds which were to be phased in under SB 1 were incorporated into the funding of SB 351, providing the state base for a completely equalized Guaranteed Yield up to 45 cents per $100 valuation in each of the new county units.

A third tier was added with a guaranteed yield of $21.50 for each additional one cent of local taxation, increasing each year to $28 in 1994–95.

Unequalized local enrichment was allowed above the third tier, but a $1.50 tax limitation for maintenance and operation would allow only the yield on 23 cents for local enrichment in 1991–92, and this amount was reduced each year down to 5 cents for 1994–95.

A second provision in SB 351 was a revenue limit imposed when more than 2 percent of the state's students attended districts that spent more than 110 percent of the state's equalized funding level (excluding existing debt service costs).

While providing more equity than SB 1, SB 351 still maintained traditional weaknesses: the underfunding of the Guaranteed Yield, continued unequalized enrichment and a lack of specific funding for school facilities other than an emergency facilities appropriation of $50 million for the 1992–93 school year.

SB 351 also provided large increases in local property taxes in school districts across the state. These increases in local contributions were deemed necessary due to a projected $4 billion immediate shortfall in state revenues. State appropriations for funding future years of the new law were not made.

Low wealth district satisfaction with the new law became moot. High wealth school districts, noting the erosion of their privileged position, and contrary to their consistent past arguments that school finance was a legislative and not a judicial concern, filed suit against SB 351 on May 3, 1991.

Albert Cortez reports on the new challenge in the June 1991 issue of the *IDRA Newsletter:*[139]

> **Wealthy Districts File Suit Challenging Constitutionality of Senate Bill 351**
> A mere three weeks after the adoption of the state's latest finance reform legislation, a group of the state's wealthiest school systems filed a lawsuit in Travis County District Court challenging the constitutionality of the new plan. Leading the challenge were the Carrolton-Farmers-Branch and Coppell Independent School Districts, both of which were defendant-intervenors in the original *Edgewood v. Kirby* lawsuit. The suit was filed in the same Travis County court which heard the *Edgewood* arguments and will be heard by Judge F. Scott McCown, who issued the ruling which struck down Senate Bill 1, the legislation which preceded Senate Bill 351. Since the state's wealthier school systems may lose some amount of state aid and will be required to share their tax base in the county unit system incorporated into Senate Bill 351, their challenge to the new system had been expected. Additional challenges have been filed by other high wealth school districts.
>
> A review of the legal briefs reveals that the new court challenges focus on the more controversial aspects of Senate Bill 351, specifically the creation of the county education units and the redistribution of revenue across local school district lines. In their complaints wealthy school systems argue that:
>
> - the taking of funds from one school district to another violates Article VII; Section 3 of the State Constitution and prior court decisions in *Love vs. City of Dallas;*
> - the creation of the county education units in SB 351 is "no more than a subterfuge since these county units do nothing of an educational nature and only levy, assess and collect taxes and distribute same";
> - SB 351 further violates the State's constitution by *not requiring an election* in the newly created units to set the local tax rates, but rather a set rate is dictated by the State and thus constitutes a state property tax (which is prohibited by the State Constitution);
> - SB 351 violates Article II, section 56 of the constitution by requiring individual changes in the county unit boundaries in order to maintain a level of relatively uniform property value per pupil within those counties, thus violating the constitutional prohibition against the adoption of "special laws regulating the affairs of counties, cities, towns";
> - the creation of county education units constitutes a form of consolidation or annexation, and suggests that the new legislation's provision for allowing districts to set new tax rates in order to meet outstanding debt service obligations violates a constitutional prohibition against the voting or issuance of bonds in the "consolidated" districts.
>
> The suit argues that since the newly created system is unconstitutional, state education funding should not be provided to any school districts under the new system.
>
> The court is reviewing the Carrolton-Farmers-Branch brief and has set a hearing on the issue for June 17th in Austin. These developments suggest that school districts should be very careful in setting up 1991–92 budgets pending some indication of the direction of the court's leanings on this issue. IDRA will continue to monitor developments in this area and keep its readers informed as these events evolve.

During the period in which the courts were determining the constitutionality of SB 351, I wrote a nine-part series of articles which appeared in the IDRA *Newsletter* between September 1991 and January 1992, and were reprinted in various newspapers in the state.[140] [141] [142] [143] While similar to the myths presented in Chapter 1 of this publication, these articles addressed some of the new myths and misinformation in school finance that were circulating around the state as the courts were holding hearings on SB 351. The following are the eight myths presented in the nine parts of this series:

Part I: Introduction

During the closing hours of the 1991 regular session of the Texas Legislature, a compromise plan was finally adopted as a response to the *Edgewood vs. Kirby* school finance suit.

Misconceptions about school finance are very common, and the school finance provisions of the new legislation are no exception. Senate Bill 351 (SB 351), which creates the new system of school finance for the State of Texas, seems confusing not only because of the inherent complexity of school finance systems, but because of lower than usual media coverage. The 1991 session of the Texas Legislature was largely ignored as the media focused on the war in the Middle East. The new legislation was accompanied by a media blitz of erroneous and partially erroneous information released by high wealth school districts in order to elicit sympathy for the partial loss of their privileged position in the finance system.

The basic change in the school finance system of Texas is the creation of 157 county and 31 multiple-county districts for the collection and equitable distribution of taxes in support of the foundation school program, the minimal program guaranteed by the state to the schoolchildren of Texas. The county districts also provide for the equitable distribution of county-wide taxes for a portion of enrichment funds. Under this latter provision, school districts wishing to tax above the minimum level may do so, with the state matching local revenues up to a point in order to guarantee an almost equitable yield for all districts.

The legislature did not address additional local tax effort above the guaranteed level, which still allows high tax wealth districts to provide considerably large amounts of funds at considerably lower tax rates. Neither did the legislature provide funds for school facilities, perpetuating a long tradition of the adequacy of school facilities in Texas being dependent on district wealth.

The concept of school tax and revenue equalization at the county level is not new; Texas has had such a provision for several decades. The innovation in Senate Bill 351 is that the provision for County Equalization Tax Units is changed from *permissive to mandatory.*

Part II: Robin Who?

During the formulation of the new law, Senate Bill 351, and subsequent to its passage, this piece of legislation has been identified in the local, state and national media as the "Robin Hood" plan for school finance equity. This sobriquet is invariably accompanied with the explanation that the new system of school finance takes money from rich school districts and gives it to the poor.

This stigmatization of the new system of school finance is unfortunate, since it is erroneous. Senate Bill 351 does not take money from rich school districts and gives it to poor school districts. Senate Bill 351 does create a new taxing unit in which taxes collected are used for the population of the unit. But, this is no different from city, county, state or national taxes in which the proceeds are expended according to perceived needs in the taxing entity. If the new school taxing entity is based on a Robin Hood model, then so are the tax and spend characteristics of all taxing entities.

Prior to the enactment of Senate Bill 351, each of the 1,056 school districts enacted a mandated tax rate. If the local yield produced less money than what was needed to finance the foundation school program, the state made up the difference. If the local yield in high wealth school districts produced more money than what was needed to finance the foundation school program, the school district could use the additional revenue to enhance the district's school program and/or lower the tax rate.

In some very high wealth districts a tax rate at 15 percent of the average school tax rate for the state provided more money than what the school district could effectively utilize. Unfortunately, low tax rates in high wealth districts provided a tax shelter or very low taxation of high wealth property, at a time when the state was experiencing a crisis in providing funds to augment low wealth district tax collections.

The creation of the 188 county taxing units provides for the revenue from a set tax rate to be distributed equally among all districts in the county, with the state still augmenting local revenues if the county education districts fail to raise sufficient funds for the basic school program. The use of the county units provides an equal tax effort for rich and poor districts alike, with the amount of the state subsidy for poor school districts being reduced by the excess revenues in high wealth districts. The county district makes no impact on low wealth districts other than the fact that some of the support is coming from the high wealth district revenues *rather than from the state.*

The sole beneficiary of the county system is the state rather than the low wealth districts. Naturally, this benefit will be passed along to the average taxpayers of the state who will not have to pay high taxes in support of low wealth school districts, while high wealth goes relatively untaxed. Under the new system the previously untaxed wealth is now being tapped so that all taxpayers share more equally in supporting area schools.

Part III: Leveling Up

Officials from the high wealth school districts express dissatisfaction with the new system of school finance, claiming that the equity is brought about by constraining the amount of money available to high wealth school districts. Having been informed by the courts that all districts must have access to similar revenues, these officials and their attorneys repeatedly call for the state to "level up," bring revenues for low wealth districts to the levels of high wealth districts, rather than lowering revenues for high wealth districts to the low levels of poor districts.

At first glance this argument makes a lot of sense and poses no problem in obtaining public support. Everyone in Texas would be extremely happy if disparities were removed and no school district would have less money under the new system than they had under the old system.

This goal may be admirable in theory, but it is indefensible in practice. To bring all school systems in the state to the level of the highest expending school district in Texas this past year would require an additional state appropriation of $45 billion. Considering that the state legislature turned catatonic at the prospect of having to provide $4.5 billion in additional appropriations to address the state deficit, it is inconceivable that it would consider a massive leveling up as recommended by high wealth school districts. Nor would the general public react favorably or support a $45 billion increase in state taxes.

High wealth districts concede that the state has limited resources to eliminate existing disparities, therefore the disparities can be slowly eliminated over a period of time. Leveling up would consist of the allocation of additional state money on the basis of low wealth until all districts are on par with the wealthiest. Unfortunately, this will never come to be. Not only is the disparity so great that several generations of children would finish school under the present inequitable system prior to parity being achieved, but the failure to provide a practical cap for high wealth districts allows them to continue to increase disparities at the high end of the expenditure range while the state pours money in at the low end.

In the past 40 years, since the implementation of the current system of school finance, each attempt by the legislature to narrow disparities with the infusion of huge sums of money for low wealth districts, has resulted in an increase of expenditures by high wealth districts which has actually increased the disparities in wealth. The appropriation of $4 billion in 1984 through House Bill 72 was completely eroded by the time of the *Edgewood vs. Kirby* trial in 1986, with disparities in school district spending being *greater* than that prior to the infusion of the massive amounts of funding.

High wealth school districts would be much more responsible if, instead of advocating that the state level up to the highest expending school district, they would advocate a much-needed upward increase in expenditures for education to provide an improvement of educational opportunities for all children.

To a great extent Senate Bill 351 already accomplishes this. Upon implementation on September 1, 1991, the state expenditure for public school education in Texas will increase by $614 million. An additional increase is passed on to the local level.

Under the provisions of the new law, increases in the state share of education spending will be no less than $614 million in 1991–92, $439 million in 1992–93, $608 million in 1993–94, and $630 million in 1994–95. This adds up to $2.291 billion for the four-year plan, an increase of 40 percent. The average annual increase of 10 percent is twice the inflation rate for each of the past few years. The state investment in education may still not be sufficient considering the inadequacies of past levels of funding, but it certainly repudiates the criticism that Senate Bill 351 levels downward in education expenditures.

Part IV: Lost Money/Tax Increases

With the advent of Senate Bill 351, the Texas public has been bombarded by a media blitz about the plight of the high wealth school districts. The legislative passage of SB 351 was accompanied by news releases on the loss of teachers and the cancellation of educational programs.

Unfortunately, the rich school districts have consistently failed to differentiate between loss of revenues due to tax base sharing with other districts in the county, and loss of revenues due to the perpetuation of the ridiculously low tax effort of the past.

One of the most consistent myths in education is the erroneous belief that high wealth school districts have abundant resources because of their willingness to levy high tax rates in support of the education of their children. The high wealth school districts have abundant resources because the system of school finance gives them access to higher revenues with a lower tax effort; low wealth school districts have lower revenues with a higher tax effort.

Unfortunately, the state education agency persists in computing, printing and disseminating information on the impact of legislation and litigation on the basis of past tax effort. These projections are consistently reported in the media as the "loss" of massive amounts of money *if high wealth school districts continue the low tax effort they have exerted in the past.*

It is impossible to predict future tax rates for the various school districts in any county, let alone tax rates for all the school districts in Texas. However, it is easy to determine the amount of revenues available to any school district at any specific tax rate. For illustration, we can use a hypothetical property tax rate for 1991–92 of $1.17 per $100 appraised valuation. This is a reasonable level of taxation since this is the maximum rate for which the state will provide equalization funds.

Using this $1.17 tax rate for each school district in Bexar County, the very high wealth Alamo Heights school district (which has been conducting a media blitz on its loss of programs, teachers and services due to SB 351), will produce $4,923 in revenues per pupil. Other school districts in Bexar County will have the following revenues per pupil: Harlandale—$4,649; Edgewood—$4,704; San Antonio—$4,612; Northside—$4,168.

The superior amount of revenues for the Alamo Heights school district is attributed to the district's high taxable wealth. The low figure for Northside is attributed to a low percentage of special students participating in specially-funded state programs.

In spite of SB 351, the Alamo Heights school district still enjoys a higher level of revenue than any of the 12 school districts in San Antonio at identical tax rates. If Alamo Heights perpetuates its current 92 cent tax rates, which for decades has been the lowest in the county, the amount of anticipated revenues per pupil will diminish to $3,697. Should this happen, Alamo Heights schools can expect a diminishing of programs, teachers and services although the loss in this area of increased educational costs should be attributed to the district's traditional *lack of tax effort in support of education,* rather than to the impact of SB 351.

Part V: Equalization

It is erroneous to assume that with the passage of Senate Bill 351, the State of Texas has at long last implemented an equitable system of school finance. Although the creation of county education districts for tax and revenue equalization purposes is a step in the right direction, the effort falls short of achieving an equitable system of school finance for the state. Some of the shortcomings of SB 351 are serious enough to warrant a return to the courts requesting that the system still be considered unconstitutional.

The Texas Legislature provided an equitable system for the first tier of funding through the creation of county education districts. The tax effort of the county is shared equitably by all of the districts in each county in support of the foundation school program, the minimal funding base for all districts in the state.

The second tier is only partially equitable. Commonly called the "Guaranteed Yield" program, this tier guarantees a set level of revenue from a tax effort above the first tier, the foundation school program. School districts with low tax wealth whose tax yield is below the amount guaranteed by the state receive the difference from the state. Unlike the county equalization plan in the first tier, districts with high taxable wealth that generate more revenues than the amount guaranteed by the state get to keep the additional revenues. Thus, this section of the law provides equalization among the poorest one-half of the state's districts, but provides no equalization between the poor and wealthy districts.

The third tier, "Unequalized Enrichment," is a perpetuation of the inequity problem. School districts may exert additional tax effort to enhance the educational program above the provisions in tiers one and two, up to a maximum tax rate established by the state. The maximum rate is $1.50, although this limit may be extended for each individual district to take care of past bonded indebtedness.

There is absolutely no equalization in this third tier. The wealthiest school district may realize $700 per pupil with a 1 cent tax increase, while the poorest school district may realize $2 per pupil with the *same* 1 cent tax increase. It is interesting and significant to note that this third tier of unequalized enrichment is the unique characteristic which led to the state system of school finance being found unconstitutional; yet this characteristic was not adequately addressed in the final legislation.

Some relief in funding disparities is provided for low wealth school districts in that, as the level of taxation in tiers one and tier two is raised, the amount of unequalized enrichment taxation is constrained as it approaches the state tax limit. Since the combination of tax rates producing equalized yields in tiers one and two are below the tax limit, inequities in tax rates and tax revenues are perpetuated.

In addition to not eliminating disparities, another glaring weakness of SB 351 is its failure to address the need for providing equitable facilities at equitable tax rates in the school districts of the state.

Perhaps it is unfair to say that the legislature did not address this issue since it did add the words "and facilities" to the more equitable funding for maintenance and operation of the schools. The $50 million provided during the second year of the new biennium is a drop in the bucket compared to the need for facilities. Instead of providing equitable funding of facilities, the legislature simply stated that funds provided for the operation of the school could also be used for facilities.

This provision creates somewhat of a dilemma for the educational system in that funds deemed inadequate for school programs must now also be used to fund facilities. Considering that the various school districts in Texas expended more than $1.5 billion on capital outlay during the last school year and $1 billion in retiring bonded indebtedness, it will take some magic to reallocate existing funds for school operation in order to provide adequate school facilities.

The problem of providing necessary school facilities with no additional funds is exacerbated by most of the school districts in the state falling in at least one of the critical categories of school facilities need: *increasing enrollments requiring new and additional facilities, obsolete facilities needing immediate replacement, and high bonded indebtedness precluding the issuing of new bonds.*

Regardless of the merits of SB 351, it is impossible to conclude that Texas now has an equitable system of school finance.

Part VI: CAPS

Is it necessary or desirable to place a limit on the quantity of funds expended for education by high wealth districts?

Senate Bill 351 has encountered stiff opposition from high wealth school districts because of limitations placed on the amount of funds which can be expended by a school district in the implementation of its educational program. The new law establishes two types of limitation, a limit of $1.50 local tax rate and the establishment of a freeze in local and state spending when disparities among school districts reach a certain level.

The first type of cap, a limit on local school tax rates, is not new with SB 351. Texas has always had limitations on school tax rates. School districts are not constitutionally established. The creation of school districts is a legislative prerogative in meeting the Texas constitutional mandate that the legislature establish an efficient system of free public schools. In delegating the responsibility for the operations of the schools to school boards at the local level, with the accompanying levying and collecting of school taxes, the legislature imposes a limit on these tax rates.

In the unconstitutional system of high and low expenditures based on the wealth of the school district, the legislative constraint affected only the low wealth school districts. A very wealthy school district with a tax levy of $1.50 per $100 valuation could easily collect $75,000 per student in local taxes. On the other hand, a very poor school district at the maximum $1.50 tax rate would collect $300 per student. Therefore, the limitation on taxation was a real limitation only for low wealth school districts.

The creation of county education districts distributing some of the wealth of rich districts within the county to alleviate the cost of state support for the basic school program has made the existing limit a reality for a larger number of school districts. The most commonly heard argument from high wealth districts is that the state should not place a limitation on the quality of education.

In theory, this argument is sound. In practice, it creates a problem. As the state increases the amount of money it expends in support of low wealth school districts in order to reduce the disparities between rich and poor as ordered by the courts, the high wealth districts increase the disparity by simply increasing local tax rates. This is not speculation; it has occurred each time that the state has increased funding for equalization purposes. The classic example was in 1984 when a $4 billion dollar increase in state spending for education was eroded by local increases for unequalized enrichment, to the point that within a two-year period following House Bill 72, disparities between high and low wealth districts were larger than before the increase in state effort.

This phenomenon of cyclic equalization at state expense followed by disparities due to local enrichment, was noted by the courts in *Edgewood vs. Kirby* and the Texas Legislature, where it was described as "a cat chasing its own tail."

The opposing viewpoints of not limiting the quality of education and diminishing disparities among children in the various wealth districts can be reconciled only by extensive state support for education at a level where no district is constrained by lack of resources.

The second type of cap on school revenues in SB 351 is a new type of limitation. Poorly conceptualized and even more poorly worded in 12th hour compromises, state and local revenues are frozen when the system experiences disparate spending for 2 percent of the school population. Unfortunately, the disparities are frozen in place along with the amounts of revenues.

This limitation is more appropriate as a safety valve to protect the state treasury from its commitment to equalization, should school districts' call upon equalization funds to be larger than what was estimated during the time of the enactment of the new law.

A far better approach to the use of caps would be for the state to determine what is the maximum amount of funds needed to support a high quality educational program without unessential frills and luxuries. This amount should then be provided for in a state-guaranteed, fully equalized system with no further expenditures allowed.

Part VII: Does Money Make a Difference?

Senate Bill 351 is not only responsible for the creation of various myths about school finance, it is also responsible for exploding some myths.

For 22 years, since the advent of the *Rodriguez* court case and through the *Edgewood vs. Kirby* litigation, poor school districts, the courts and the Texas Legislature have been told that school finance equity is not necessary since money does not make a difference.

Personnel from wealthy school districts have continuously stated that the problems of poor school districts stem from inadequate administration, rather than from lack of resources. Wealthy school districts are still stating that the redistribution of funds through a more equitable system is unnecessary because there is no guarantee that the additional funds for low wealth districts will result in improved educational opportunities for their students.

During the trial of *Edgewood vs. Kirby* the defense presented expert testimony in support of this argument. A deputy commissioner from the Texas Education Agency presented studies showing a lack of a conclusive relationship between expenditures for education and student performance in the state minimum competency test as proof that money does not make a difference. (*Note:* Subsequent studies by the state education agency have substantiated the relationship between district wealth and student performance.)

After 22 years of arguing that money does not make a difference in the quality of education, it is interesting to hear officials of high wealth districts complain about the effect that a diminishing of funds will have on their high-quality educational programs. One can only trust that they were at least partially right and that their high quality administration will be able to compensate for the inevitable loss of funds if the districts are unwilling to set tax rates at the prohibitive high levels that taxpayers in low wealth school districts have learned to live with these past 50 years.

The question still remains, "Does money make a difference?" It is irresponsible to argue that it does not. Education is not much different from any other form of human activity in that the proper resources are necessary to sustain the activity. Even in the most simplistic educational system, such as the infamous ideal school with Horace Mann sitting on one end of a log and with the student at the other end, inevitably we must address the questions of how to acquire an adequate number of logs, how much will they cost, and who is going to pay for them.

Educational activity requires salaried personnel, materials, supplies, books, furniture, equipment and a physical plant in which to house them. In the marketplace you get what you pay for, and the educational institution with limited funds gets limited resources. That is not to say that bad purchasing cannot or does not take place, but on the other hand, it is difficult to acquire quality with limited resources. Spending $40,000 in buying a new car does not guarantee a good car, but spending $400 in buying a car guarantees the acquisition of more problems than the car is worth.

All other things being equal, the student with the best teacher, the best books, the best library, the best computer, and the most personnel and non-personnel resources will have the advantage in the educational system.

The problem is further compounded in Texas metropolitan areas by a proliferation of school districts with varying wealth. Although inequities in accessibility of funds is commonly argued and demonstrated in comparisons of very high and very low wealth districts, the variance in wealth among all districts has an impact on educational performance.

In metropolitan areas such as San Antonio, there is a well-beaten path formed by educational personnel who start their educational careers in the low wealth school districts and work their way up into the higher paying school districts. As the superintendent of the poorest school district in the State of Texas some years ago, my biggest problem was trying to implement an instructional program with a new and untrained staff. More than half of the teachers could not meet the minimum state requirements for certification. The second biggest problem came at the end of the year when one-third of the staff left the school district. Invariably, the letters of resignation expressed regret, but the prospect of a much higher salary, increased fringe benefits, air-conditioned schools, an abundance of materials and supplies, and the latest in furniture and equipment left little choice. Although some stayed, there was a continuous emigration of the most experienced, the better-trained and the most successful staff members to the wealthier school districts.

Money does not guarantee educational excellence, but excellence is difficult to achieve without money. You cannot buy sirloin steak at 39 cents a pound.

Part VIII: School District Consolidation

Opposition to tax base sharing through the creation of county education districts by high wealth districts was expected. Low tax rates with high yields in support of the foundation school program have been replaced with a uniform tax rate for the county units with the yield used in support of the entire unit. Opposition to the creation of county education districts by low wealth districts was not generally expected. Yet, with the exception of the plaintiff school districts in *Edgewood vs. Kirby,* most low wealth districts fought hard and long against the creation of the county units.

Opposition to the county units stems from the dreaded "C" word in Texas education: "***Consolidation.***" School districts were afraid that once there was consolidation for financial equity purposes, consolidation for operational purposes could not be far behind.

Fear of consolidation is not unjustified since Texas operates an unbelievable 1,057 school districts, some of them with as few as three, seven and nine students. Not only is the operation extremely expensive, since the state subsidizes the inherent financial inefficiencies of small school districts, but the limited size of many of the school districts precludes instructional program efficiency.

Educators are in agreement that there is a minimum number of students below which district operation becomes inefficient, costs become prohibitive, and curricular, extra-curricular and support services are severely constrained. It simply is not feasible, let alone efficient, to offer a varied selection of courses responding to the interests of individual students in a high school with 10 students.

It is difficult to determine at what point smallness becomes detrimental in terms of administrative and programmatic efficiency; however, school administration research does give some guidelines in determining a cut-off point for financial efficiency. Experts in administration have indicated that a school district needs some 3,000 students in order to achieve economy of scale. Studies indicate that as the size of a school district diminishes below 3,000 students, financial efficiency in the operation of the district diminishes proportionately.

A similar situation exists for large school districts. Very large districts tend to be bureaucratic, difficult to administer, unresponsive to the characteristics and needs of different segments of the community, and financially expensive to operate. The belief that large school districts are less expensive to operate is only a myth. The savings in superintendents' salaries is more than offset by the inevitable bureaucracy of very large school districts, with an abundance of deputy, associate and assistant superintendents.

An ideal-sized school district would have approximately 15,000 students. The range for maximum efficiency extends from a low of 7,000 to a high of about 50,000 students. Less than 1,600 is considered too small; more than 100,000, too large.

It is obvious that the predominant characteristic of school districts in Texas is "too small." Out of 1,057 school districts in Texas, 722 have less than 1,600 students and are receiving special state financial assistance over and above the cost of the foundation school program to compensate for the inherent financial inefficiencies of very small districts. The amount of assistance provided is proportionate to its smallness. The smaller and less efficient the district, the larger the amount of state assistance provided.

Some of the small school districts cover a large geographic area. These school districts are identified as "sparse" districts and face unique transportation and servicing problems which may make it counterproductive to consolidate them. But the vast majority of small districts in Texas do not fit under the category of sparseness.

Senate Bill 351 did not address the issue of district size nor consolidation. The creation of county education districts simply provides an equitable tax base for the basic tier in the state system of school finance. Fear of consolidation is a poor excuse for opposition to the county education districts, particularly when consolidation may be a desirable reform goal on its own.

Part IX: Performance and the Distribution of Funds

One of the most pressing problems of our society is a desire for accountability by public institutions. The performance of public schools in Texas provides ample justification of the need for school accountability. This is particularly true of the performance of the school in the education of atypical or special school populations. These segments of the population include the minority, disadvantaged, limited-English-proficient, migrant and immigrant students, commonly referred to as the "at risk" students because of the high risk of their becoming school dropouts.

The increasing costs of education and the general dissatisfaction with the performance of the schools have reached a point where it can be predicted that there will be no increase in state investment for education without a proportionate increase in accountability. During recent legislative sessions we have seen state mandates for student minimum competency testing, teacher competency testing, changes in teacher pre-service preparation, increases in teacher in-service education, prescriptions for site-based management, etc. . . . State legislation addressing accountability for school performance has not peaked, not any more than the cost of education has peaked.

On the basis of this observation we can predict that there will be future efforts to bring about a closer relationship between school funding and school performance. Unfortunately, school performance is a poor criterion for the distribution of school funds. Providing additional funding for school systems not meeting expectations constitutes the rewarding of undesirable performance and may lead to a waste of scarce resources. On the other hand, the allocation of funds on the basis of outstanding performance may constitute the provision of supplemental funds to the entities which need them the least and, conversely, to the denial of money to the entities which need them the most.

Even the curtailment of funds for flagrant disregard of program regulations may provide indirect punishment to the victims of past irregularities. The federal government has long found itself in such a quandary in the regulation of federal aid to education. The poor utilization of funds, and even the misappropriation of funds, was initially dealt with by the deduction of these funds from future categorical financial assistance. Unfortunately, the students who had already been penalized because of the incompetence, irresponsibility, and even dishonesty of school personnel, found themselves without subsequent federal assistance. For these students the problem was compounded through the accountability system.

However, this is not to imply that school accountability is undesirable. But in both financial as well as programmatic accountability, it is important that the accountability mechanism be directed toward the responsible parties, rather than to the victims of such irresponsibility.

For this reason it is desirable that the concepts of school funding and accountability be kept separate. It is the responsibility of the state to provide an adequate and equitable system of school finance. It is a separate responsibility of the state to guarantee that financial resources are used effectively.

The assessment of educational systems indicates extensive inefficiencies, especially in the education of students "at risk" of dropping out of school prior to completion of the 12th grade and graduation.

The poor school performance of these students is nothing new. Historically, as a group they have received little benefits from the educational system, with the school being exempt from any accountability. The at-risk students come predominantly from disenfranchised populations, with little need for accountability since the school has traditionally been accountable to the power structure only for the performance of the children of the power structure. The poor performance of the disenfranchised populations led to the development of the deficit models which are in place today, where accountability bypasses the school and school personnel, and instead is directed toward the students, rather than toward the institution.

Accountability in the education of mainstream children is only slightly better than that for atypical children. It is not that there is no accountability, rather accountability is based on the wrong criteria. The reward and punishment system of the school seldom addresses the performance of students. Teachers are informally evaluated on the basis of student control, not student educational performance. The performance of school administrators is evaluated on the basis of order, cleanliness, public relations, etc., rather than on the performance of students and teachers. The performance of top management (superintendents) is based on charisma, personality, communication skills, public relations and community service, rather than on the performance of the schools.

An ideal school evaluation system would include the adequacy of resources (inputs), the adequacy of educational processes, and the adequacy of the educational product.

The latter form of evaluation is unacceptable to school personnel, since they feel that the performance of the student is a variable which they cannot manipulate. Yet, product evaluation is the most critical aspect of evaluation because the success of the school is not determined by the allocation of proper resources or conducting the proper activities, but rather in the quality of the product that is produced. The ideal form of accountability would be on the basis of student skills, cognition, capacity for further training and their subsequent *quality* of life.

Inadequacies in the product of the school should lead to accountability, but in the final analysis it is the educational personnel that must be held personally accountable, rather than curtailing educational resources for the inadequate product of the schools.

Conclusion

Although SB 351 increases the amount of equity in access to funds for school districts in Texas, it falls short of providing an equitable system of school finance. It is very possible that the new system will be subjected to further court scrutiny, and once again the legislature will wrestle with the problem of creating an equitable system.

Throughout the 22 years of litigation and legislation the finance reform effort has been hampered by three formidable barriers to reform: 1) Continued attempts to perpetuate an elitist system of education providing a privileged position for a privileged segment of the school population. The corollary of this barrier is the perpetuation of a tax structure that protects high wealth from taxation in support of the general school population. 2) The existence of sacred cows (such as the existing number of school districts providing community power bases and the tradition of using local funds for school facilities) which cannot be moved from the road to finance reform. The only justification for the existence of these sacred cows is that they have always been there. 3) The lack of information and an abundance of misinformation and myths concerning the various issues involved. Since school finance equity and the reform necessary to achieve it are not yet dead issues, it is necessary to continue to acquire adequate and responsible information for an enlightened citizenry supportive of new state policy.

EDGEWOOD III: SB 351

Arguments on SB 351 were heard in the same district court which had heard the previous *Edgewood* cases. After weeks of hearings, the district court ruled that the newly created county education districts (CEDs), which had been given apparent support in earlier Texas Supreme Court rulings, were constitutional. The property wealthy schools requested and were granted an expedited appeal directly to the Supreme Court, who in turn, reviewed the case and rendered its latest decision on January 30th, 1992 (*Edgewood* III).

Unbelievable as it may seem, the high court found the CED system unconstitutional based on two technicalities: (1) since the CED tax was required of all districts, it was in violation of the state constitutional prohibition against state property taxes, and (2) the lack of a provision for local elections to approve the CED tax was unconstitutional.

Needless to say, advocates of equity were stunned by the Supreme Court ruling that found the new county education districts unconstitutional. In the Supreme Court *Edgewood* II decision, such units were addressed by the high court as a feasible way of achieving equity. The Supreme Court stated, "The Constitution does not present a barrier to the general concept of tax base consolidation, and nothing in *Love* [*v. Dallas*] prevents creation of school districts along county or other lines for the purpose of collecting tax revenue and distributing it to other school districts within their boundaries."

What really happened is that in the face-to-face confrontation on school finance equity between the legislature and the Supreme Court, the court blinked. During the interval between the *Edgewood* II and the *Edgewood* III decisions, there was a significant change in the composition of the Supreme Court. Justices supportive of equity had opted for other endeavors, had lost in their bids for re-election, or simply did not have the stomach to face the mountains of criticism of their support for an egalitarian system of education.

CHAPTER 11

AFTERMATH, SENATE BILL 7 AND *EDGEWOOD* IV

In a March 1992 article,[144] Dr. Albert Cortez summarizes the third Supreme Court school finance decision and lists the eight options facing the legislature:

> In the latest of a long series of court decisions regarding the manner in which Texas funds its public schools, the State Supreme Court once again overthrew the system adopted by the state legislature. In a 7-2 verdict the court held that the new funding approach embodied in the latest funding law (SB 351) committed two major violations. One, it mandated that the newly created county education districts raise a uniform property tax, which in the opinion of the court made the tax a state property tax—a tax which is forbidden by the state constitution. The court also ruled that the new law failed to require a vote to validate the adoption of the county education district's (CED) tax rate, again a violation of state constitutional provisions. In a separate opinion wherein the court split 5-4, the majority of judges chose to require that the CED taxes, which they ruled to be unconstitutional, would have to continue to be paid through the 1992–93 school year, and gave the legislature until June 1, 1993, to adopt a new plan.
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> While the court ruled that the manner in which the legislature had implemented the county education tax base sharing idea was flawed, they did not rule that such an approach could not be fixed to allow it to pass judicial review. The majority opinion also took great pains to make it clear that it was not retreating from the decisions it had rendered in *Edgewood* I and II, wherein it affirmed that students must be provided substantially equal access to the same revenue per pupil for similar tax effort.
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> In the wake of the ruling, state leaders began attempting to assess the implications of the latest court decision on the legislature's second attempt to resolve the longstanding and bitterly contested issue. Although given until June of 1993 to come up with a new plan, that time line is now threatened by additional lawsuits (these possibly in federal court) which will challenge the State Supreme Court's authority to require the paying of a tax which they have deemed as being unconstitutional. Concerned with the disruptive impact of such a lawsuit on local school districts (and on state electoral races), the political leadership is considering the convening of a special legislative session to develop and adopt a new funding plan.
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> As a result of the rulings that have been handed down over the past three years, the legislature finds itself with fewer and fewer options. While willing to tell the legislature when it has erred, the court has yet to provide some degree of *reliable guidance* on what approach might be used to achieve equalized funding that it considers acceptable. While many experts had assumed that the county education district concept had been endorsed by the court, their latest ruling—while not rejecting the tax base sharing concept—suggested that even this approach had to be carefully crafted to avoid constitutional pitfalls. Given little guidance, and somewhat frustrated by its inability to develop an acceptable solution, legislators are once again preparing to tackle an issue which even state political leaders describe as being one of the most difficult and divisive political battles they have ever witnessed. As the defenders of the unequal status quo and proponents for equalization prepare to once again square off, a number of major plans have begun to emerge. Among these major approaches are:
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> - constitutional amendments which would ratify whatever plan the legislature adopts with a clause which forbids the court from exercising judicial review in the area of school finance;

- constitutional amendments which would set some kind of "equity standard" which the legislature would have to meet;
- a constitutional amendment to allow for a state property tax, with proceeds used to equalize funding;
- a constitutional amendment to allow for statewide "recapture" (taking money raised in one district and using it in others to help equalize funding);
- a constitutional amendment which would remove mineral and industrial property from the local tax base and make it subject to state property tax, which would be distributed on an equalized basis;
- making adjustments to the current legislation to allow continued use of county education districts;
- revising the existing plan to allow use of CEDs for equalized enrichment; and
- consolidation of school districts to achieve or facilitate equalization.

To expedite and perhaps facilitate the development of an acceptable and politically feasible plan, legislative leaders have formed task groups which are exploring the various options. At this writing, there appears to be no consensus on any one proposal.

Developing consensus around any plan requiring a constitutional amendment (requiring two-thirds vote to each chamber) will be extremely difficult. Achieving the adoption of a plan that will not be challenged in court by either property poor or property wealthy districts is even more unlikely.

Although ideas on how to address the problem once again abound in Austin, some political leaders have quietly communicated that planners must consider a set of "parameters" when developing their legislative proposals, most beginning with the term "No." Among the guidelines provided for these plans are:

- no new local taxes required to fund the plan;
- no new additional state funding beyond that currently available in 1991–92 must be required; and
- no consolidation of districts should be proposed.

Beyond the loss of the legislation, the court's ruling has also weakened the legislature's commitments to increase funding for education for the next four years, a commitment which had been incorporated into the last plan that was adopted. Faced with a continuing sluggish economy and projected revenue shortfalls, not to mention re-election campaigns in the fall, some state leaders have chosen to attempt to equalize funding using available revenue. Some legislators, frustrated at what are now considered inconsistent positions by the Supreme Court, are beginning to consider support for ratifying whatever system the legislature adopts by amending the constitution to prohibit judicial review of their actions in this area. Equity proponents are studying various options, including "fixing" the CEDs to allow judicial acceptance of a plan somewhat similar to the last one adopted. Whatever proposals are finally introduced, the history of the issue suggests that the battles over the latest "solution" will once again be long and bitter wars, and it may be years before an acceptable "compromise" is forged, or a final court judgment is rendered. In the meantime, the children of Demetrio Rodriguez and others who initiated the fight for equal funding have grown up, and their children, his grandchildren, are now attending those same unequal schools. How much longer can all of us afford to wait?

The Supreme Court gave the legislature until June 1, 1993, to develop a new plan, but it also specified that the CED system could continue for the 1992–93 school year. Opposition to paying the CED taxes, especially by business interests, led to a federal court suit challenging the authority of the state Supreme Court to require the payment of a tax which they had ruled unconstitutional. This created tremendous pressure on the governor to call a special session of the legislature to consider an alternate plan.

Since the CEDs were the foundation of the school funding system, there was general consensus among experts that any new plan must correct the technical flaws which were found objectionable by the Supreme Court, or develop an alternative approach.

The following narrative from a June 1992 article by Dr. Albert Cortez provides insights into the political climate in the wake of the *Edgewood* III ruling:[145]

> As the prospect of a federal ruling on the CED tax collection challenge loomed, the governor and other state leaders started developing alternative funding approaches which would respond to the latest Supreme Court ruling in *Edgewood v. Meno.* According to numerous sources, a broad array of plans were in the process of being developed, with many experiencing significant changes on a day-to-day basis as proponents attempted to garner support.
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> These proposals ran the gamut, from approaches which aimed to fix the problems that the courts outlined in the existing CED system and massive consolidation of school districts throughout the state, to a plan which would have voters ratify whatever strategy the legislature adopted as being constitutional. Polls conducted by independent entities indicated that while all the plans being considered had some support, *there was absolutely no consensus developing around any one proposal.* Not only was the political leadership fragmented (as reflected in the plans presented by the governor, the lieutenant governor and the speaker of the house), there was a corresponding lack of consensus among the various Austin education lobby groups on how to resolve the problem.
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> While some administrator groups favored an approach which abolished the existing CED units in favor of a system based on guaranteed revenue returns for tax effort (guaranteed yield), a majority of a panel of superintendents convened by Sen. Carl Parker concluded that the CED approach with adequate funding, was perhaps not as bad a funding mechanism as some had feared. The governor, on the other hand, proposed to remove business, industrial and mineral property from local tax bases, tax these properties at the state level, and redistribute the resulting revenue on an equalized basis. To entice teacher support for her plan, a provision of the plan mandated that a portion of the funds a district received through the Cost of Education adjustments (a mechanism which is supposed to recognize differential operating costs beyond the control of local districts) be passed on to local non-administrative staff as salary increases.
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> Despite her attempts to appease the teachers' lobby, the governor's plan was greeted with a lukewarm response, with one teacher group publicly expressing its opposition to the plan. While the teachers' and administrators' groups struggled to reach a consensus, other education proponents argued over the importance of inclusion or exclusion of tax and revenue limits, the extent of allowable unequalized enrichment, and so-called "equity standards," which some proposed to incorporate into the constitution as either benchmarks against which to measure equity, or mechanisms for fending off court intervention on the issue.
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> Further complicating the discussions were concerns over the level of funding that would be proposed. Although some plans reflect bold new initiatives in the funding mechanisms, the level of funding proposed under most plans almost universally incorporated decreases from the funding levels that had been incorporated into the current CED based system. With many legislators reluctant to support the tax measures needed to deal with a projected $200 million shortfall in education funding, much less the multi-billion dollar tax bill associated with full funding of the CED based plan or other plans, many members publicly and privately advised the governor to delay the special session until after the November general elections. Hamstrung at every turn, the political leaders awaited word from Judge Nowlin's federal court as that court struggled with the business sector's challenge to the 1992–93 collection of the CED tax.
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> After weeks of hearings and speculation, Judge Nowlin handed down his ruling on the power of the State Supreme Court to extend the CED tax collections into the 1992–93 school year. According to Judge Nowlin, the State Supreme Court had a right to exercise such a prerogative, particularly when one weighs the impact of non-collection of CED taxes against the effect that such a ruling would have on the education of 3.4 million Texas schoolchildren.
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> With the announcement of Judge Nowlin's decision to allow second-year collection of the CED

taxes, the pressure to call a special session was significantly reduced. After consultation with staff and legislative members, the Governor announced her decision to postpone the calling of the special session until sometime in November (or earlier if the 5th-Circuit Court reverses Judge Nowlin's decision). The postponement, however, is only a temporary reprieve. Urgency to formulate a school finance plan will remain high, as will the need to achieve some degree of consensus among the state's political leadership and education interest groups before a special session is convened.

With only five months to achieve a consensus on an issue which has divided the state legislature for more than two decades, the prospects for a short, decisive session seem highly unlikely. Should the legislature fail to adopt a new plan before the start of the January 1993 regular session, the task will fall upon the shoulders of the newly-elected state legislature, which will be handicapped by the loss of many members who have developed expertise on this complex issue. Anticipating the possibility that the legislature may fail to meet the Supreme Court's mandate that a new plan be adopted by June 1 of 1993, the original *Edgewood* plaintiffs have asked the district court to consider the appointment of a master to develop an interim funding plan. Given the documented reluctance of many members of the legislature to make hard decisions on this issue, it is conceivable that a master may be needed to develop an equitable plan when and if the legislature fails to meet the court deadline. Even if the legislature adopts a new approach, many observers speculate that the wealthy districts who challenged the last plan (SB 351) may have been better off leaving that proposal alone.

Regardless of the legislature's action, it seems a good bet that any new plan will be challenged by wealthy districts if the plan is too equitable, or by low wealth districts if the plan falls too short of achieving true equalization. In the interim, in Texas, the quality of a child's education will continue to be dependent on the wealth of his or her parents and the neighborhood in which they happen to live. Change in the funding situation may ultimately depend on the extent to which the private sector continues to tolerate or demand change. An inadequate workforce and lack of economic competitiveness is produced and perpetuated by the state's educational status quo.

The following is an IDRA outline of the sponsors and key elements of the various legislative proposals for a June 1993 replacement of the system, with the possibility that a federal court ruling negating the state Supreme Court extension would require a more immediate replacement:

I. Gov. Richards' Proposal
   A. Removal of business property from local tax bases; taxation at state level with equalized distribution.
   B. Creation of quality school fund through reallocation of available school fund revenue.
   C. Allow for unequalized environment and incorporation of equity standard in the state constitution.
II. Lt. Governor's Plan
   A. Guaranteed yield approach.
   B. Funding levels to be based on determination of cost of "quality program" by Legislative Education Board.
   C. Some limited recapture with revenue allocated to teacher retirement system.
   D. Incorporated $300 million for facilities funding.
III. Speaker of the House's Proposal Plan
   A. Consolidation of existing school systems into 188 county education districts (CEDs) drawn along existing CED lines.
IV. Other Plans
   A. Constitutional amendment to legalize existing CED system.
   B. Constitutional amendment which would ratify any plan adopted by the legislature as constitutional and prohibit court involvement in assessing constitutionality.
   C. Use of an inverted CED approach where the basic foundation program would return to a pre-SB 351 approach using district wealth for determining state aid; second-tier (equalized enrichment) would use a modified CED approach to tax base sharing.
   D. "Penny Pool" approach where districts would share enrichment revenues, with levels of enrichment based on a district's selected tax effort.

E. Creation of county school districts by consolidating districts along existing county lines.
F. Guaranteed yield approach with no (or limited) recapture, incorporating a high equity standard in the constitution, and allowing unlimited unequalized enrichment.

Surprisingly, school administrators were dismayed at the demise of SB 351. Part of their unhappiness may have stemmed from fear of the alternatives, especially the massive consolidation of school districts, but their main concern was that they had found the county units helpful. In addition to the collection and distribution of taxes, the new CEDs were found useful in the consolidation of other administrative tasks and provided new opportunities for cooperation and the elimination of duplicate administrative functions.

In October 1992, following the Supreme Court decision on SB 351, I retired as executive director of IDRA. This action allowed me more time to spend on school finance litigation and legislation and to assist Dr. Albert Cortez in the monitoring of and participation in all reform activities. Dr. Maria "Cuca" Montecel was appointed executive director. Her commitment to school finance reform was just as strong as mine, leading to a continued IDRA presence in litigation and legislation.

THE CONSTITUTIONAL AMENDMENTS

After much controversy and legislative bickering, the legislature opted for the passage of a constitutional amendment that would legalize SB 351. In February 1993, the legislature enacted three constitutional amendments for the electorate to consider on May 1, 1993:

Proposition 1 would legalize the CEDs created in SB 351 by making it constitutional to recapture funds collected by the taxing entity and distribute them on an equitable basis. It also imposed tax rate and recapture limits.

Proposition 2 would prohibit the legislature from enacting new school mandates without providing new funds for their implementation.

Proposition 3 would provide facilities funding through a state bond program.

I was strongly supportive of Propositions 1 and 3, but I held severe reservations against Proposition 2. I felt that the new "no mandates without new funding" provision would institutionalize current educational expenditures. Any prescription for change or improvement would have to provide new funds, with the proposed constitutional provision prohibiting the reallocation of existing funds. Future legislatures could not say, "Spend less money on the athletic program and more on teaching the basic skills." If the legislature wanted a re-emphasis on reading, writing and arithmetic, it would have to provide new funds for the schools to do so. Schools are already too traditional and tractive. Innovation could not be expected unless new funds were provided.

The April 1993 issue of the *IDRA Newsletter* was dedicated to school finance reform. In this special issue, Dr. Albert Cortez and I present an analysis of the three propositions facing the voters:[146]

> The Texas Legislature has enacted two constitutional amendments which will be voted on by the electorate on May 1, 1993.
>
> **The "Recapture" Amendment:** One of the two amendments that permits tax base sharing in the state and consists of four components:
>
> The first component gives the state legislature the authority to redistribute property taxes collected in very wealthy districts to nearby low wealth districts. This process is referred to as "recapture"—taking surplus funds in one district and assigning them to another district as part of the state share of the educational program.
>
> The second component in the proposed amendment authorizes the legislature to create county education districts for taxing purposes only from existing districts, and allows the legislature to set a tax rate for local and county districts, or to delegate the authority to set the tax rate to the boards of each local and county district.
>
> The third component limits the tax rate that may be set for the county districts to a maximum of $1.00, unless the voters in the county district wish to approve a higher rate.
>
> The fourth component limits the total amount of tax revenue that may be "recaptured," or re-

assigned, to no more than 2.75 percent of the total state and local education revenue (excluding textbooks, retirement contributions and state property tax revenue).

IDRA supports the concept of requiring very wealthy districts to share property tax revenue as the most inexpensive way of achieving funding equalization in Texas. As one of the creators of the tax base sharing concept now in use in Texas, IDRA acknowledges that this sharing of the tax base is one of the more appealing ways of resolving the long-standing school finance inequity problem in Texas.

Tax base sharing in the proposed constitutional amendment provides the following advantages:

- it reduces the effect of wealth disparities that are the major cause of the great funding disparities that have plagued the Texas system of school finance;
- it allows the state to use the very high wealth of some school districts to compensate for the low wealth of others;
- the limitation on the amount of recapture will guarantee that only extremely high wealth districts will share tax revenue with other districts;
- it reduces the cost of state equalization;
- it keeps funds raised by property taxes in county education districts in the nearby community;
- it reduces the amount of wealth not currently being taxed;
- it creates greater tax equity;
- it avoids the massive consolidation of school districts.

IDRA has long advocated and championed the creation of a fully equalized system of public school finance in Texas. While the organization has some concerns about the relatively low limits on recapture which are incorporated into the proposed amendment, taken as a package, the positive aspects far outweigh its shortcomings. It is an efficient and inexpensive method of meeting the court order for an equitable system of school finance.

The "No Money–No Mandates" Amendment The second proposed constitutional amendment exempts local school districts from complying with new state mandates unless the new mandates are fully funded by the state.

The reason for this second constitutional amendment is the past tendency of the Texas Legislature, and to a lesser degree, the central education agency, to impose new mandates for the improvement of education in the absence of an adequate system of school finance. School district officials have been hampered in attempting to meet new state mandates when the level of school funding precludes meeting any requirements, old or new.

An example of this type of dilemma was the enactment of a severe limit on the number of students which can be enrolled in a classroom. Although the smaller limit which reduces student-teacher ratios is a desirable condition, the legislature did not provide adequate state funds for the maintenance and operation of significantly smaller classes. Since the public school has little control over the number of students enrolled, the new and smaller ratios had to be met by the employment of a larger number of teachers. The increased personnel costs, plus the costs of maintaining a larger number of classrooms, was not addressed with a proportional increase in state aid.

The capital outlay costs in support of a larger number of smaller classes presented an even greater dilemma. Since Texas provides almost no state assistance for school buildings, furniture and equipment, many of the school districts were strapped for the necessary financial resources in support of the new state mandate. In the absence of adequate state funding, local property taxes skyrocketed as school districts attempted to provide the extra school facilities made necessary by the new state mandate.

Similar problems were encountered as school districts responded to various state-imposed reform efforts, including the assignment of dropout prevention coordinators, specifications for curricular content, minimum performance standards and an always growing testing and reporting process.

Since the 73rd Legislature has not enacted additional school funds in addressing the court-

> ordered changes in the state system of school finance, and it is doubtful that any large amount of new state funds will be available, school districts are taking precautions, lest the legislature come up with another laundry list of state mandates without new funding for implementation. The proposed constitutional amendment will guarantee that future reform legislation be accompanied with the necessary funds for its implementation.
>
> However, this proposed constitutional amendment can become a double-edged sword. While it will protect school districts from future liability for the cost of new mandates, *it will also tend to institutionalize all current expenditures.*
>
> It is inconceivable that all present school expenditures are either wise or efficient. During the past 10 years there has been extensive public criticism of school expenditures. Extensive amounts of school funds are being expended in support of interscholastic athletic programs which provide participation by a ridiculously low number and percentage of students. Increased school bureaucracies have led to massive increases in administrative and support personnel. Expenditures for public relations have increased substantially as school districts deal with the accountability issue by inundating the media with stories of school accomplishments, which are a poor substitute for the dismal school performance of the students.
>
> The approval of the second constitutional amendment will curtail all new leadership and regulatory efforts by the state. It will make it difficult for the state to establish any type of performance standards for the schools, since any type of performance standards can be converted into dollars and cents, the amount estimated needed in support of the new standards.
>
> Conceivably, an accreditation mandate that requires that students master any portion of the instructional program can be accompanied by a list of "new" school activities necessary for meeting the standard and the cost of such "new" activities. The failure of the legislature to provide the new funds for the new activities can make any standard for improvement in performance unconstitutional.
>
> By far, the worst outcome of the proposed amendment is that all funds currently being expended in schools for the support of educational activity which is not working, will be *institutionalized for those purposes.* Any innovative idea which might improve the performance of schools will have to be accompanied by new funds.
>
> It would be preferable for the people of Texas to demand through a constitutional amendment the adequate funding of Texas schools, rather than to perpetuate the current inadequacy of funding and a corresponding inadequacy of performance.
>
> *The "School Facilities" Amendment* A third constitutional amendment requests voter approval for the creation of a new state bond program to help school districts pay for school facilities. The bond program is part of a new state initiative designed to make state money available to school districts to help them cover the costs of new buildings. Eligibility for the bond revenue would be based on district wealth, and all districts would be required to pay for a portion of the cost of local facilities.
>
> Texas is one of only a few states that does not provide any state funding to help local districts pay for the cost of school facilities. The constitutional amendment to create the new state bond program is a good first step toward insuring more equal access to quality facilities for all children attending Texas public schools.

Opponents of the SB 351 system launched an all-out effort against Propositions 1 and 3. Dissemination of information to the electorate was based mostly on fear and misinformation. A network of opponents sprang up with an awesome faxing capability so that an untruth created in one part of the state was quickly distributed across the state. SB 351 provided a $1.50 limit on district tax rates for maintenance and operation. Proposition 1 stipulated a $1.00 limit on the county education districts. These two limits were concurrent. Of the $1.50 limitation, only a $1.00 rate could be collected by the CED. Opponents of the propositions informed the public that the two limits were consecutive; that is, the $1.00 limit on the CEDs was over and above the already existing $1.50 limit. Taxpayers who felt that they could not afford the $1.50 limit, plus the debt service tax, were appalled at the thought of a $2.50 tax rate, a 67 percent increase in their taxes.

Circulars were distributed throughout the state indicating that the fictitious $2.50 maintenance and operation tax was really a ruse for the future acceptance of a state income tax.

There was so much disinformation, that I was asked by supporters of the first and third propositions to write a position paper which they would have published in newspapers and circulars throughout the state. The result was the following position paper issued by IDRA on March 3, 1993:[147]

> **Proposed Constitutional Amendment No. 1**
>
> *José A. Cárdenas, Ed.D.*
>
> When voting on the first proposed constitutional amendment, the voter will see the following description:
>
> Proposition Number 1: The constitutional amendment allowing redistribution of ad valorem taxes for schools, authorizing the legislature or local districts to set a minimum tax rate in county education districts, and placing a cap on the ad valorem tax levied by county education districts.
>
> If passed, the proposition will allow the legislature through county education districts to take a limited portion of taxes collected in very high wealth districts and redistribute them to low wealth school districts in the county unit, *in lieu of funds provided by the state for equalization purposes.*
>
> Estimating the total cost of education in the state at $16 billion dollars from local and state sources, the proposition would allow the legislature to take as much as $440 million from the wealthiest districts and transfer this amount to low wealth districts.
>
> The legislature deems this appropriate because school districts have no inherent wealth. District wealth is state wealth located in an arbitrarily assigned area, and district revenue is state revenue collected by the district.
>
> The general impact of this proposition is that property in high wealth school districts which traditionally has been taxed at very low rates will now be taxed at a uniform county district rate, with the funds redistributed within the county district. There is only one winner in this proposed arrangement, the State of Texas, which will save $440 million in state equalization funds by this system of sharing the wealth within the county districts.
>
> Special interest groups have successfully complicated the impact of this amendment by associating the features of the amendment with other action which the legislature may take, but which is not a product of Proposition No. 1.
>
> Special interest groups have complained that the legislature is investing too much or too little money in the educational system. Either may be so, depending on one's point of view, but *the amount of the investment in education is not an issue in the proposed constitutional amendment.*
>
> Although there are no guarantees, Proposition 1 does provide $440 million for education not available without the amendment. Whether the legislature will pass through this amount in additional support of education if the amendment passes remains to be seen, but if the amendment fails there will be no additional funds from this source.
>
> Other groups have argued that the legislature is assigning too much or too little of the cost of education to local property taxes. This too is not an issue in the proposed amendment. *The legislature will continue to have the prerogative of deciding how much of the cost will be borne by local property taxes and how much by state taxes.* The outcome of the proposed amendment will have absolutely no impact on this prerogative.
>
> Similarly, the first proposition will not result in any more equity, or any less equity in the state system of school finance. *Passage of the proposition will simply make the equity required by the courts easier to achieve, and $440 million less costly for the state.*
>
> The controversy over Proposition 1 has been needlessly complicated by the inclusion of adequacy of funding and source of funding in the controversy. Neither is addressed in the proposed amendment. A decision to vote for or against the amendment would be much easier to reach if deliberation is limited to the relevant issue.

Immediately after the circulation of this article on Proposition 1, I was asked to do a similar article on Proposition 3. I wrote an article for distribution in the San Antonio area, which was widely circulated. The article specified the potential benefits of state facilities funding for school districts and taxpayers in Bexar County. I then received requests for similar articles for other parts of the state. I wrote these using the same text as the San Antonio article, but substituting data for all of the school districts in the target area. The areas included the Rio Grande Valley, El Paso, Lubbock, San Diego and Rio Grande City. The articles were published in local newspapers and/or distributed by supporters of the constitutional amendments. The following is the text of the San Antonio article:

Proposition 3: A Windfall for San Antonio

José A. Cárdenas, Ed.D.

Subject to a Texas Education Agency recommended bill for the distribution of state aid for school construction purposes, the passage of Proposition 3 in the May 1 election can provide a substantial windfall for the school districts and taxpayers of Bexar County.

Proposition 3 provides for the state to issue $750 million in bonds for the renovation of old schools and the construction of new ones in school districts with less than state average property wealth. The proposed legislation provides for state assistance for facilities on the basis of the need, adequacy and cost effectiveness of district construction plans. Funds will be available for renovation of old facilities, for meeting current growth and for anticipated future growth.

The use of a proposed varying state share based on school district wealth would result in school districts in Bexar County receiving state assistance ranging from 0 to 80 percent of the cost of the construction or renovation. The following figures based on 1991–92 property values show the amount of state aid for a $1 million project in a Bexar County district:

District	*State share %*	*State aid for $1 million project*
Alamo Heights	0	$0
North East	0	0
Northside	18	180,000
Judson	28	280,000
San Antonio	47	470,000
East Central	49	490,000
Somerset	74	740,000
South San	74	740,000
Harlandale	75	750,000
Southside	77	770,000
Southwest	78	780,000
Edgewood	80	800,000

In spite of reform advocates' efforts, all three of the propositions for constitutional amendments failed in the May 1, 1993, election. I perceived this as the most serious setback to our school finance reform efforts since the 5-4 vote reversal of *Rodriguez* in the U.S. Supreme Court in 1973. Anytime that there is a debacle such as this, it is inevitable that it be followed by the question, "What happened?" A major step to the resolution of the decades-long search for school finance equity appeared within our grasp, and it was dashed to pieces by the voters of the state. At the request of the IDRA constituency, I wrote the following analysis of the failure of the constitutional amendments, which was distributed by IDRA as a special bulletin:

The Voice of the Elctorate: What Did it Say?[148]

José A. Cárdenas, Ed.D.

The voters have spoken. Saturday, May 1, 1993, marked the end of the statewide elections which included a vote on three constitutional amendments dealing with the financing of schools.

The result of the vote is now history. The voters of the State of Texas clearly rejected all three of the proposed constitutional amendments, the first one by a very decisive margin. More than two

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million voters turned out to defeat the three propositions by 63 percent, 51 percent, and 56 percent, respectively.

What caused Texas voters to reject the three propositions? And what are the short-term and long-term effects of this rejection?

Opponents of the proposed amendments will be quick to assert that the vote was indicative of public sentiment against taxes. Proponents will be equally quick to assert that the vote is indicative of a lack of concern over the education of the state's 3.5 million public school children. Perhaps both sides will be right, but I believe the issue is much more complex than this. Simplistic conclusions give few insights into the nature of the problem and none into future action or direction.

It would be nice to have the time and resources to conduct a massive survey of voter attitudes and subject them to multiple regression analysis in order to identify and weigh the various factors which influenced the election. It is doubtful that anyone will attempt this, so in the absence of empirical data, I will conduct my own analysis of the reasons for the defeat.

There may be hundreds of reasons for people voting as they did, but I believe that there are five major influences that led to the rejection of the three propositions.

1. *Opposition to the elimination of the elitist system of schooling which has always characterized the state educational system*

Texans have always liked to glory in the past with their erroneous myths and obsolete traditions. Educational opportunity in Texas has been a scarce commodity since colonial days, and the majority of the state still feels that universal education is a waste of time and money. Although the entire world is cognizant of the shift in economic base from agriculture, minerals and manufacturing to services, information and technology, Texans would like to continue living in the past with an educational system ranking 40th among the 50 states and precluding quality education for all but a few.

The *Rodriguez* court case in 1971 signaled the beginning of a movement for an efficient system of schooling based on an equitable system of school finance. The *Edgewood* court case today demands equity or it will close the schools.

During the entire election period, opponents of the amendments called for "less drastic measures" for compliance with the court order—this in spite of the courts having already rejected three less drastic measures and obviously losing its patience with the failure of the legislature to reform the system.

Opponents of reform called for the defeat of the amendments and proposed that inequities in the system be eliminated by giving low wealth districts revenue from the Texas lottery to bring them up to the level of their richer neighbors. As the Texas Legislature discovered, it would take some $45 billion to bring all Texas schools to the level of their richest neighbors, an amount which cannot be feasibly raised by an extensive income tax, let alone with the limited revenues of a state lottery.

The failure of the legislature to reform the system can be attributed not to the lack of available reform measures, but to its desire to change the system of school finance just enough to meet the equity standards imposed by the court, while still maintaining a privileged position for privileged students and privileged taxpayers.

However, the number of privileged under the existing system of school finance cannot account for the overwhelming defeat of the amendments, so there must be other reasons for the decisive vote.

2. *Opposition to taxation*

There can be no question but that some of the negative vote resulted from the universal state opposition to taxation. Ever since Proposition 13 in California reversed the trend toward higher and higher taxation, vested-interest groups in Texas banded together to oppose all forms of taxation. There is some irony in this since Texas, unlike California, ranks 49th among the 50 states in per capita taxation.

Although it is easy to conclude that the wealthy are the most prone to oppose the taxation of wealth, I do not believe that this group was a key element in the school finance amendments' defeat. With notable exceptions, the business leadership of the state is very much convinced that future economic growth is now dependent on a skilled work force. The business community is aware that there can be no economic survival for Texas by attempting to compete with Third World countries as a provider of cheap labor. Cheap unskilled labor is an obsolete commodity in this country. The Texas business community is now shopping for skilled labor, and either importing the supply which Texas schools cannot produce, or doing without and defaulting in national and world economic competition.

As evidence of business community support for an improved educational system, we can note that the main support for the proposed constitutional amendments in Bexar County came from Save Our Schools and the Greater San Antonio Chamber of Commerce, both organizations substantially subsidized by the business community.

The opposition to taxation now comes from the older, retired community and a rapidly aging population. I cannot help but be sympathetic to their plight. Having worked in an era in which there was little investment in retirement, and finding themselves in an era in which the family structure has changed so that taking care of grandpa and grandma has little priority in their children's budgeting, the inability of the elderly to earn a living has become a nightmare with increased and regressive taxation. Persons over 65 living on Social Security checks look with horror at consistent increases in sales taxes, annual increases in county, city and school taxes, and the unconstrained growth of taxing entities. To them, the last straw probably was the construction of a domed stadium with a transit-company-sponsored sales tax. Fear of additional taxation is no longer tempered by the civic purpose of the tax; for many, it is a question of survival.

3. *Misinformation*

Unfortunately, the voters of Texas were subjected to more misinformation about the proposed constitutional amendments in this last election than in any other election I can remember.

Proposition 1 was a simple amendment which would have allowed the state to use high, relatively untaxed wealth in the richest of school districts to partially finance the cost of education in the other 90 percent of the districts of the state. Opponents of taxation would probably be surprised to learn that the continued exemption of property in very high wealth districts will result in $440 million in additional state and local taxation to compensate for this loss, or it will further reduce the quality of education in the state by $440 million, which legislators are now not prone to produce.

The current system of school finance places a legislative limit of $1.50 on local school tax rates per $100 valuation (with some exceptions for past bonded indebtedness). Included in this $1.50 cap is the amount being raised by the tax sharing county education districts. In Proposition 1, county education districts were limited to a $1 rate within the legislated maximum.

Opponents of this proposition quickly informed the public that the $1 limit was in addition to the $1.50 maximum already imposed by the state. Homeowners were warned that passage of the proposition would lead to an immediate school property tax rate of $2.50 per $100 valuation, a 67 percent increase.

A newsletter distributed by "Texans Against Robin Hood" asserted that the proposition was part of a carefully crafted plan by the governor to implement a state income tax when the public reacted negatively to the $2.50 property tax.

A similar newsletter by the same group falsely identifies Texas as the only state in which there is a court mandate for school equity. It falsely describes Proposition 1 as an attempt to make equitable funding a part of the Texas Constitution. It questions the constitutionality of the judge's decision in the *Edgewood* court case, in spite of the decision being upheld by the Texas Supreme Court. It asserts that passage of Proposition 1 will free billions of dollars which would go into the pork barrel. It predicts the creation of a whole new state-appointed bureaucracy to administer funds created within the county districts, etc.

The fearmongers did an excellent job in private communications as well as in the public media to lead 62 percent of the voters to reject equitable taxation in a small number of districts with distribution of the revenues in lieu of state funds.

4. *The conspicuous absence of educational leadership*

Almost every day the media carried stories which conveyed the erroneous and irresponsible assertions made by the opponents of Proposition 1. Conspicuous by its absence was any denial or rebuttal by the education community.

As a group, educational administrators stayed out of the discussion. The main concern of the educational leadership in Texas has always been a plentiful supply of money, with little regard for its equitable distribution or the educational needs of students in low wealth districts.

While Proposition 1 addressed the equitable distribution of funds, school boards focused on the inadequacy of funding. They dream of an ideal system in which the state will provide 80 percent operational costs making it relatively easy for them to raise only 20 percent at the local level. The leadership's lukewarm support of Proposition 1 was due to the failure of the state to provide sufficient funds to ease the local effort. Since the percentage of the cost of education in Texas provided by the state has already peaked at 50 percent and has been declining during the past 10 years, the expectancy that the state provide the majority of educational costs is very unrealistic.

At a meeting of community business people and school district leaders concerning the upcoming election, not a single one of the lowest wealth districts was in attendance. At a better represented meeting a week later, the representative from one of the poorest school districts in the state was asked by the business community where the district stood on Proposition 1. He shocked the participants with the qualified statement, "I think our district will support the amendment, but it will not come up for board consideration until the end of April."

Although other low wealth school districts did support the amendment, this support can be tritely described as "too little, too late."

School officials will be quick to point out that state law prohibits the expenditure of school money in support of any election. This may be so, but I will be equally quick to point out that this has never been an impediment when the schools have had a sufficient interest in the outcome of an election, and there are many things that could have been done without the need to expend school money.

In the months preceding the election and during the election itself, critics of the amendments repeatedly raised the charge that most educational funds are being wasted in that teachers comprise less than 50 percent of school staffs, with most of the money going to the bureaucratic administrators. It is surprising that no denial surfaced from the educational leadership.

By simply looking at the Texas Education Agency's report, *Snapshot '92,*[149] it can be immediately ascertained that of the 72 percent of Texas school employees which are professional staff, (i.e. eliminating the 29 percent comprised of janitors, cafeteria workers, bus drivers, etc.), 74 percent are teachers and 11 percent are teacher aides, making the total instructional staff 85 percent of the educational task force.

During the entire election I did not hear a single person from the education community, or outside the education community for that matter, provide this rebuttal to a very commonly heard criticism.

The administrative leadership could not even carry Proposition 2, which provided no new state educational mandates without additional new funding, a compromise amendment proposed by the legislature at the districts' request.

Proposition 3 would have provided state money for school construction in below-state-average-wealth districts. The representative of a large school district eligible for funding under this proposition, desperate for new schools in keeping with his district's rapid growth for which a bond issue election was only recently soundly defeated, could not bring himself to state that the district supported Proposition 3.

Although teacher groups took positions either for or against the various proposed amendments, neither the educational leadership nor the more than 1,000 school boards provided a voice of strong positive leadership in the election.

5. *School accountability*

Although perhaps lost in the tumult, it appears that there is a strong voice in the state calling for no additional funds for education until such time as educators become accountable for funds already supplied.

There is no question but that education is sadly in need of an accountability system. Unlike other professions, educators do not attempt even a semblance of regulating its own members. The best teachers I have observed seldom raise a voice against their numerous colleagues who accomplish nothing. It is not uncommon for a nominee for the national Superintendent of the Year award to come from a school district with a student dropout rate of more than 50 percent. Just a few years ago the Texas Superintendent of the Year award was given by the profession to the superintendent of the school district with the highest dropout rate in the state!

The public, particularly the taxpaying public, is sick and tired of seeing media releases by the public relations departments of districts describing the success of its schools in order to cover up the ineffectiveness of its programs. The public is sick and tired of reading about this year's "innovative" programs created to move the public focus away from last year's innovative programs that did not work. An IDRA analysis of the state's 75 most promising innovative programs revealed that 73 of these programs did not even include an evaluation component to determine program success.

The Texas voter is sick and tired of listening to school officials attribute minuscule improvements in student performance to the leadership of the administrators and the board (never to the teachers), while being unable to account for massive deterioration in student performance. Each account of progressively poorer student performance in state and national indicators is invariably followed by the appointment of a task force to determine the reason for the poor performance. I have never seen in the media the findings of such task forces. I doubt that such reports are ever issued.

The same Texas Education Agency report on professional positions also informs us that 60,000 students dropped out of Texas schools during 1991–92, a number which I can prove is actually much higher than the Texas Education Agency reported. Of these students reported by Texas schools as dropping out during the 1991–92 school year, 27.3 percent came from economically disadvantaged homes. This means that 72.7 percent of the dropouts, 39,210 students, came from middle and upper class homes.

Performance in the state-mandated Texas Assessment of Academic Skills (TAAS) leaves much to be desired. In 1991–92 only 44.6 percent of the 1,133,871 Texas students who took the test passed all three sections in reading, writing, and arithmetic. Only 58.5 percent of white, non-Hispanic students passed the tests, while only 21.2 percent of Hispanics and only 17.5 percent of African Americans passed.

At the seventh grade level, only 36.3 percent of all students passed all three tests: 49.4 percent of white, non-Hispanic; 21.2 percent of Hispanics; and 17.5 percent of African Americans.

Performance on the SAT college entrance examination is sadly summarized in the report as "lower than the national average," which is already disgustingly low.

In spite of these statistics, the Texas educational establishment calls for increases in salaries, increases in state funds for education and increases in property taxes, without any accountability for their failure to produce.

When the political leadership does call for increased accountability, it is usually demanded from the "schools," a conglomeration of bricks and mortar that has little sensitivity to the needs of children or influence on their performance. Recent suggestions for accountability focus on penalizing low performing "schools" by giving them less money and rewarding high performing "schools" by giving them more money. This only results in withholding funds from the children that need them the most and giving additional funds to the children that need them the least.

School administrative personnel play musical chairs, constantly moving from one school district to another before accountability can catch up with them. My visits to school districts are usually prefaced by a superintendent saying, "I am new to this school district, don't blame me for anything you find wrong." I cannot help but believe that in whatever district the new superintendent came from, there is another superintendent making an identical statement.

Successful school practitioners simply move up the built-in career ladder, moving away from the low paying jobs in the poorest school districts and into the higher paying jobs in the wealthier districts.

Although I believe that the relationship between money and performance is cyclic, and that Texans are reaping the harvest of years of financial neglect of their schools, I also believe it is incumbent upon school personnel to take some initiative in addressing their deplorable performance.

Additional resources made available through a more adequate and equitable system of school finance must be targeted for the development of better programs for poor performing children, attracting higher qualified and better trained personnel into the profession, and the massive retraining of existing staff. There is a critical need to raise expectations for pupil performance and to replace the current programs with excessive emphasis on basic skills with challenging curricula which focus on the development of thinking skills.

The first step for the reform of Texas schools is the recognition and acceptance that there is a problem. Massive changes in the economy and the threat of world competition demands a move away from the development of a cheap labor work force to the development of a skilled labor force capable of a creative contribution to product development, production and marketing. Texas not only lacks a work force in support of a global competitive technology, Texas does not even possess the schools capable of developing it.

Texas educators must understand and accept the need for a massive reform of our schools, rather than resisting all forms of change while waiting for the return of oil and cotton to make Texas schools adequate for meeting the labor needs of the prevailing economy.

Texas educators must abandon the past practice of finding deficits in the students to account for poor performance. All other social sciences, and the general public as well, reject the school's argument that the failure of 80 percent of the minority population can be attributed to the genetic or cultural characteristics of that population. Schools must address the inherent potential of all students, instead of letting socioeconomic class be the prevailing determiner of school success.

The most tragic scenario which can be created for Texas schools is to allocate more money and have this money used for the expansion of "remedial" programs which are low level, slow-paced, repetitious, dull, boring, and self-fulfilling. It is ridiculous for the school to presuppose that all children from minority, poverty and language minority homes, and who differ from white, middle class, English-speaking children are mentally deficient and should be taught like the mentally retarded. These children need enriching experiences to expand their mental horizons, not further confinement in dull, mentality constraining drills.

Educators, as well as the rest of the state population, must quit looking for simplistic "quick fixes," which cost nothing, achieve nothing, and even tend to be counter-productive. Assuming that teachers who are unsuccessful all year will encounter extensive success by doing the same things for an additional few weeks is most unrealistic and not the solution to the problem. A drastic improvement in the state's student performance in the TAAS test or the SAT will surely not come about through the use of a cute new hand puppet which the teacher and students spent all of their instructional time in making.

The Immediate Future

The opponents of the constitutional amendments have not killed school finance reform in Texas. All they have succeeded in doing is giving taxpayers in a few rich school districts a continued $440 million tax break.

The legislature has one month in which to enact an equitable system of school finance. About the only feasible option still available is to increase equitable funding by reforming the system

> within the existing constraints of the constitution. It is a simple matter to reduce inequities by doing away with tax haven school districts, and at the same time recovering the $440 million in revenues lost in the election. There are already several school consolidation bills available for accomplishing this, the only difference among them being which districts are to be consolidated with which.
>
> I do not believe that the legislature will seriously consider placing unrealistic caps on school district expenditures as a way of achieving the court-ordered equity. Although this would make the opponents of taxation very happy, it would be a tragedy for the future of the state.
>
> An impasse in the legislature may lead to the closing of the schools, but even if this should come to pass, the closing will be very temporary. If the legislators allow the courts to close the schools, 3.5 million kids will be sent home. It would be only a matter of days before the Texas electorate would realize that there are worse things in life than taxation.
>
> **The Long-range Future**
>
> Having tasted victory in this constitutional amendment election as well as in a number of recent school bond elections, there is no question but that education is going to have a harder time reaching into the public's pocket for additional funding.
>
> Support for a larger investment in education will have to be coupled with an identifiably larger return on the investment. It is unreasonable to assume that the public will continue to pick up the tab for an educational system that cannot turn out half of the student population with sufficient skills to pass a minimum competency test in reading, writing and arithmetic. There not only must be a measurable improvement in the basic skills, there must be comparable success in computer literacy, science and technology. The future success in meeting the workplace needs of the economic sector will be the key to an adequate level of public school finance.
>
> School personnel must develop the capability of responding quickly and accurately to the massive amount of misinformation about the schools and related issues. School public relations specialists, which every medium and large school system seems to have, must spend their time promoting education rather than promoting administrative officers and the school board. There is no reason for the massive amount of misinformation which surfaced during the last election to go unchallenged.
>
> Educators, in cooperation with the economic sector and the family, must develop a new educational paradigm which rejects the erroneous and false assumptions of the past and is compatible with the educational needs of the remainder of this century, and of the new one to come. This paradigm must create an educational system responsive to a diverse clientele, rather than perpetuating the elitist system utilized in the past.
>
> Although we have no guarantee that additional funding will bring about a dramatic improvement in school performance, it is a certainty that such an improvement will never come about in the absence of adequate resources.

This depressing and pessimistic article was well received by reform advocates, the IDRA constituency and the general public. On the other hand, it produced a torrent of criticism from school administrators who took severe issue with my comments about their feeble efforts for the passage of the constitutional amendments and my assertion about their lack of accountability. One superintendent sent me a blistering letter requesting that his name be struck from the IDRA mailing list.

Our disappointment over the failure of the constitutional amendments was short-lived, and in a few days we were back in the Texas Legislature, again providing data and technical assistance for the development of an alternative approach to school finance equity.

SENATE BILL 7 AND EDGEWOOD IV

Prior to the end of the 1993 73rd Legislature and only days prior to the Supreme Court deadline for the closing down of the Texas public school system, the legislature enacted SB 7. The salient characteristic of the new law was the neutralization of high wealth, not by the direct sharing in county education districts, but by five alternatives available to high wealth districts.

In June 1993 IDRA published an article by Dr. Albert Cortez describing the features of the new law and its unique test in the Texas courts:[150]

> In the last days of the 1993 session, the Texas Legislature approved Senate Bill 7, a new plan for funding Texas public schools. The revised funding scheme was developed as the second response to the Texas Supreme Court's mandate that the state adopt a constitutional system by June 1, 1993, after a revenue-sharing plan was soundly defeated by Texas voters in the May 1, 1993, open referendum.
>
> *The New Bill* The key feature of the new equalization proposal *provides five options from which the 109 wealthiest Texas districts may choose in order to reduce their property bases* to a level specified by the new legislation. The five choices that may be adopted include:
>
> - Voluntary consolidation;
> - Voluntary de-annexation of property;
> - Education of non-resident students enrolled in less affluent school systems;
> - The purchase of "Average Daily Attendance Credits" to reduce the tax base to the required levels (in essence sending money to the state for redistribution); and
> - Voluntary tax base consolidation (mini-county education district approach).
>
> School systems required to reduce their tax bases who fail to exercise one of the options by October 19th, will be subject to one of two penalties. The first requires the commissioner of education to re-assign parcels of commercial property from a non-complying wealthy district to less affluent district(s). The second, (to be exercised only in those situations where commercial property is unavailable for re-assignment), requires the commissioner to forcibly consolidate the non-complying school system with a nearby lower wealth school district.
>
> The net effect of this provision will be to reduce the tax base disparities that have been a major cause of unequal funding in Texas. Although a significant reform of the system, a three year phase-in clause will delay the full effect of this change until the 1996–97 school year.
>
> The legislation also revised the entitlement committed to school districts by the state in the funding formulas. The bill *reduces the basic allotment from $2400 to $2300* for 1992–93; it also eliminated proposed increases in the basic allotment for the 1993–94 and 1994–95 school years.
>
> Senate Bill 7 also *reduces the state's commitment on the amount of money that was guaranteed to school districts for each 1 cent of tax effort.* Whereas the Guaranteed Yield (GY) level had been set at $22.50 per pupil in the 1992–93 school year, with additional increases incorporated for the 1993–94 and 1994–95 school year, the new plan reduces the GY level to $20.55 for each cent of tax effort.
>
> The bill also *eliminates the state's career ladder program,* one of the key controversial reform features incorporated into the state's 1984 education reform legislation.
>
> To acquire additional support for the measure, bill sponsors Sen. Bill Ratliff and Rep. Libby Linebarger expanded the legislation to include accountability and other components which were not specifically related to funding. The bill thus *provides sanctions and rewards based on school districts' demonstrated student performance.*
>
> Among the bill's major accountability features were revisions to the state's student testing programs which move the state toward more performance-based assessment while providing rewards and recognition for campus-level improvement. The plan also incorporates a state-determined limit on local school district's administrative costs, with sanctions against school systems which exceed specified levels.
>
> One of the more progressive sections of the legislation, advocated by Sen. Gregory Luna of San Antonio, *allows school systems to pilot extended-year programs* for students identified as likely to be retained. Participation in the summer program will provide alternatives to retention for participating students.

> *Legal Challenge* With the ink barely dry on the new legislation, the state court overseeing the legal challenges to the system convened a hearing to assess the status of the case. The State of Texas presented information on Senate Bill 7, and argued that the state legislature had complied with the order to adopt a new constitutional system. The judge announced that consistent with earlier procedures, the new plan is presumed to be constitutional.
>
> The court then asked for the plaintiffs and plaintiff-intervenors' stance on the new bill. Both groups indicated that they believe the plan to be unconstitutional because it fails to provide specific funding for facilities and does not fully guarantee equal return for tax effort as required by the earlier *Edgewood* decisions.
>
> At this writing, the court has requested that all parties file objections to the new system by July 15th, at which time the judge will consider setting a new trial date. Given the time required to hear oral arguments and review the case material, the court speculated that it is likely that the Texas schools will operate under the formulas incorporated in the new funding plan throughout the 1993–94 school year. Plaintiffs and the plaintiff-intervenors argued that a master could develop an alternative equalization plan in time for the next school year and requested an expedited schedule for presenting their objections to the court.
>
> While specific numbers vary, there is a general consensus that Senate Bill 7 will result in funding cutbacks for all but a few high-taxing school systems in the state. While the tax base equalization features in the new bill may be considered a change in the basic structure of the system, the reduction in the state funding commitment and the elimination of equalized tax rate proration combine to significantly dilute the equalization potential of the bill as a whole. Whether this last new legislation satisfies previous rulings awaits the court decisions in this latest round of the *Edgewood* case.

Numerous further litigation efforts were pursued by defendant-intervenors. Claims and relief were filed by the Carrollton-Farmers Branch, Highland Park, Sterling City, Stafford Municipal, and Humble school districts. Relief was denied by Judge McCown on January 26, 1994.

Plaintiffs and plaintiff-intervenors sought further relief should SB 7 be repealed, amended or not sufficiently funded in the future, with a diminishing of the equity provided in its enactment, or if the $1.50 maintenance and operation tax cap is abandoned or raised without a corresponding increase in the guaranteed equalized yield. The request was denied without prejudice in the January 1994 opinion.

With severe reservations about lack of equity in facilities funding and provisions for legislative remedy, the court issued the following conclusion:

> SB 7 is a genuine attempt by the legislature to fulfill its very difficult responsibilities under article VII, section 1. The judiciary owes the legislature the respect of giving SB 7 a chance to work. Perhaps it will not work. Perhaps it will not be funded. But we cannot say today that it will not. Given the progress that has been made in providing equity, further orders can await further development.

The failure of SB 7 to provide complete equity, and its failure in the years following to provide equitable school facilities, led to an appeal of Judge McCown's decision to the Texas Supreme Court.

On January 30, 1995 the court issued its ruling upholding SB 7 (*Edgewood* IV). The following is MALDEF attorney Albert Kauffman's response to the Supreme Court ruling:[151]

> **Edgewood IV Creates New Standing for Reviewing Texas School Finance System**
>
> The Texas Supreme Court has upheld the Texas School Finance Law (Senate Bill 7) against a variety of challengers and challenges. The Supreme Court completely upheld Senate Bill 7 as constitutional under the Texas Constitution and rejected the following claims:
>
> - Low wealth districts' claims that the system did not provide persons in low wealth districts with substantially the same revenue at similar tax rates as that available to persons living in wealthy districts.

- Wealthy districts' claims that the wealth sharing provisions of Senate Bill 7 were in effect *ad valorem* taxes and denied the right to vote to persons in wealthy districts.
- Claims by a variety of districts that the state does not pay a sufficient and constitutional share of the entire school finance system.
- The claim by a few individual parents that the constitution requires the state to support a choice-voucher system.
- Claims by a few school districts that the state has legally redistributed the remaining monies from the old county education district (CED) system.

The general thrust of the decision was to abide by the Texas Legislature's definition of the funding necessary for an accredited system of education and the legislature's power to use the state's resources to support the school finance system, and to leave all "political" questions regarding school finance to the legislature's discretion. Unfortunately, the deference given to the legislature would almost surely lead Texas back into the old days of school finance, where children in poor districts do not have the same opportunity, and poor districts and their advocates have to bear the burden to go to the legislature and increase funding for all public schools in order to preserve any level of adequacy in education.

In *Edgewood I* (1989), *Edgewood II* (1991) and *Edgewood III* (1993) the Texas Supreme Court had consistently used a standard of review of the school finance system requiring that the system provide substantially equal access to similar revenues at similar tax rates for all districts in the state. *Edgewood IV* has significantly changed that standard. *Edgewood IV* created a new standard of review.

In summary, the court held that if a school finance system provides all districts substantially the same access to a level of funding that will support a "general diffusion of knowledge," then the system is constitutional, even if wealthy districts have both easier access to the "general diffusion of knowledge" and have unlimited access to more funds at higher tax rates than other districts in the state. Under this standard of review, the Supreme Court determined that $3,500 per weighted student was sufficient to support a "general diffusion of knowledge," and that amount could be obtained by all districts in the state at a $1.31 tax rate, and by wealthier districts at a $1.22 tax rate. The $.9 difference was considered "not substantial." The new standard of review also allowed the court to deny the poor districts' claim that the $600 gap was not substantial equality, and that at tax rates above $1.50, the gap between wealthier districts and poor districts would increase dramatically. It also allowed the court to deny low wealth districts' complaints about the decrease in funding under Senate Bill 7, the biennium lag of funding, and the complete failure to address the facilities problem in all districts.

The Supreme Court also rejected the wealthy districts' claims that the "five options" that are allowed to wealthy districts to reduce their effective property wealth violated the Texas Constitution under a wide range of provisions. In effect, the Supreme Court upheld the legislature's authority to set tax limits and to limit property wealth available to local districts to tax.

The Supreme Court rejected the "adequacy claims" of a large group of school districts, arguing in effect that the state had to pay more than half of the overall school finance system and that the state could not issue "unfunded mandates," and reserved some issues for later trial in the district court. The Supreme Court said that it was well within the legislature's discretion to set up a system in which local taxes accounted for more than half of the overall cost of education and the legislature had the power to issue "unfunded mandates."

The Supreme Court agreed with the district court that the claims of a few individuals that the Texas Constitution requires a choice or voucher system were in effect "political questions." The court said that it was up to the legislature to determine how the legislature's duty to provide for an efficient system of public free school will be implemented.

The Supreme Court also dismissed the claims of a few districts, including North East and Somerset Independent School Districts, that the commissioner of education violated the law by requiring the remaining proceeds of the CED's to be distributed mainly to districts that lost the most funding in Senate Bill 7.

Most Important Issues and Future Developments

The most important part of the decision from the equity point of view is the new definition of an efficient system. The Supreme Court determined that the legislature has defined what is necessary to produce a "general diffusion of knowledge," and that this general diffusion of knowledge is articulated in seven public education goals (Tex. Ed. Code §35.001). These are indeed commendable and very broad goals but they have no real content to them, with one important exception. Goal B states:

> The achievement gap between educationally disadvantaged students and other populations will be closed. Through enhanced dropout prevention efforts, the graduation rate will be raised to 95 percent of students who enter the seventh grade.

In other words, one of the tenets of a "general diffusion of knowledge" is to remove the achievement gap between minorities and others, and to reduce the longitudinal dropout rate from its present 45 percent down to 5 percent.

The Supreme Court then took the next jump in logic that these goals could be met by districts that were accredited under the Texas Accreditation Standards. The Supreme Court stated that if all districts in the state had access to an amount of funding sufficient to support the accredited system, the system would be a constitutional one.

The next logical jump was to argue that $3,500 per weighted student was sufficient to meet the legislature's seven goals and provide an accredited system.

At this point, logical jumps and brutal realities clash. I know of no one working in Texas public schools today who feels that for $3,500 per weighted student any districts, let alone all districts, could close the gap between minority and non-minority students, and reduce the dropout rate to 5 percent, and meet all of the other goals. Nor does anyone feel that just because a district is accredited, it is making an approach to reaching all of the "goals." Nor do persons who work in the Texas public schools feel that for $3,500 per student districts could really meet accreditation standards—not just to impress the Texas Education Agency (TEA) accreditation team, but the true spirit and letter of the accreditation requirements.

Unfortunately, this new standard of the Supreme Court is not the one that was used in Judge McCown's district court. The finding by the Supreme Court that $3,500 per weighted student is sufficient to meet the accreditation and the "general diffusion of knowledge" standard was not argued in the case, not agreed to as an issue by the parties or the court, and effectively forecloses future adequacy claims. These issues will have to be worked out in the future.

There are, however, several encouraging signs in the decision. The Supreme Court did note the tremendous problems with facilities, but pointed out that there was not a sufficient record to show a lack of facilities. On the other hand, the court noted that if there was a sufficient record to show lack of facilities that the whole system, not just the facilities part of the system, would be unconstitutional. The court also noted that "the needs for funding an education are increasing and might very soon be beyond those to which the Texas system allows all districts access." The court noted with approval the four conditions that the district court set for future school finance plans:

1. No repeal of Senate Bill 7 without a substitution that produces substantial equity.
2. No amendment of Senate Bill 7 in a manner that significantly reduces equity.
3. Senate Bill 7 must be sufficiently funded in future bienniums to produce substantial equity for the $1.50 tax cap on the local maintenance and operations tax rate.
4. Senate Bill 7's tax cap being raised without a corresponding increase in the guaranteed equalized yield.

Hopefully these comments by the Supreme Court will prevent, or at the very least impede, efforts in the legislature to further weaken the equity in the system.

The Concurring and Dissenting Options

It is important to review the concurring and dissenting opinions to get a glimpse of where the court might be going on school finance in the future. Indeed, Justice Cornyn's concurring opinion in *Edgewood III* included many of the concepts in the majority opinion he wrote in *Edgewood IV.* Similarly, many of the concepts, and indeed fears, in Justice Dogget's opinion in *Edgewood II* (rehearing) became realized when the Supreme Court changed the standard of decision in *Edgewood IV.*

There are three separate opinions in the case that argue the following. Justice Hecht and Justice Owen wrote a concurring and dissenting opinion arguing that the system was equitable and efficient, but that the wealth sharing provisions violate a 1931 Texas Supreme case and the constitutional prohibition of statewide *ad valorem* taxes.

Justice Enoch wrote a separate concurring and dissenting opinion again agreeing that the system was equitable and efficient, but that the state is over-relying on local property taxes and has failed to make suitable provision for public schools, and also has violated the prohibition of statewide *ad valorem* taxes.

Justice Spector dissented, arguing that the system is inequitable and inefficient, and strongly criticized the other judges for changing the rules of decision in the case. Justice Spector argued that the opinion "sanctions *dissimilar* revenues for similar tax effort" [emphasis in original] and that the "holding is not based on any matter that was tried in the district court." I think that it is not by accident that the last case quoted in Judge Spector's decision was *Brown v. Board of Education.*

Conclusion

The *Edgewood* series of cases has produced a clear and strong statement that the Texas Constitution does require the legislature to provide for equality of access to funds in the school finance system. The most recent *Edgewood IV* appears to have weakened that standard and to allow, if not to encourage, further weakening of the school finance system. On the other hand, it is clear that the members of the court, as well as the public, realize that, in the long term, the system cannot continue without sufficient funding and equality, and that goals of removing differences between minority and nonminority achievement, reducing dropout rates and increasing overall adequacy in the schools, are matters that must be addressed by the legislature in order to avoid further court involvement.

No subsequent legal challenges to the system of school finance have been made since this last Supreme Court ruling.

CHAPTER 12

THE STATUS AND FUTURE OF SCHOOL FINANCE REFORM

THE STATUS OF REFORM

Not very long ago, following the funeral of a family member, I happened to be in the company of a group of retired educators. One of them, a friend of many years and former colleague in the Edgewood School District, was commenting on the status of school finance equity. After displaying considerable ignorance of the topic, he commented, "I feel sorry for you and IDRA. After more than 25 years of involvement in school finance, you have accomplished nothing."

I feel that this indictment was too strong. As expressed by Judge F. Scott McCown in his January 1966 revised opinion, "When the Texas System of School Finance was declared unconstitutional in 1987, the state average per-pupil expenditure was something like $2500 and the variation in property wealth between districts was 700 to 1. Under SB 7, the state average per-pupil expenditure is something like $5000, and the variation in wealth is 1.16 to 1 at $1.50 and 28 to 1 above $1.50. We have come a long way."

McCown further concludes: "Expert testimony presented at trial concluded that under SB 7 Texas' school finance system will be among the most equitable in the country in terms of equal yield for equal effort."

McCown uses the future tense in stating "will be" because of the phase-in provisions of SB 7 that were still in the future at the time he issued his opinion.

I agree with Judge McCown that we have come a long way. There are still inequalities in the system and the Texas Legislature has not addressed adequately the need for equalized facilities funding. Yet low wealth school districts have improved considerably over the past 46 years since my first horrendous experiences as a teacher, supervisor, principal and superintendent in these low wealth districts. The system is not perfect, but it certainly is much better.

USGAO REPORT[152]

In 1995 the United States General Accounting Office (GAO) conducted a study on school finance equity for a congressional committee on education. The study focused on three states which experts in education finance identified as having implemented significant school finance equity reform. The three states used in the study were Minnesota, Tennessee and Texas.

Based on information furnished by school finance experts, the GAO researchers identified four principles for defining equity:

> (1) horizontal equity, in which all members of the group are considered equal; (2) vertical equity, in which legitimate differences in resource distributions among members of the group are recognized—for example, given children's differences, some students deserve or need more educational services than others; (3) equal opportunity, also known as fiscal neutrality, which means that differences in expenditures per pupil cannot be related to local district wealth; and (4) effectiveness, which assesses the degree to which resources are used in ways that research has shown to be effective.

In all three of the states reviewed, the reform in school finance was prompted by lawsuits initiated by low wealth districts. In each of the lawsuits the major issue was disparities in access to wealth, with Texas having the largest disparity, where district wealth ranged from $14 million in taxable property wealth per pupil in the wealthiest district to $20,000 in wealth per pupil in the poorest district.

The Texas case study presented as Appendix III in the GAO report provides a short synopsis of the reform process. It then analyzes the current system established by SB 7 in 1993, the outcomes of the reform effort and a prognosis for the current system. The following is the text of the system's analysis, outcomes and prognosis as found in the GAO report.

Current Approach Raises Less Wealthy Districts' Access to Funds, Limits Wealthy Districts' Spending

In developing a system that would meet the test of the state supreme court, the legislature chose not to develop a solution that required a further increase in state taxes, according to state officials and education advocates. The legislature had been putting more money into the system to address equity issues since the early 1980s, and it determined that to address the court's concerns, it would have to develop a solution that concentrated on redistributing local funding. Complicating the ability to find additional state dollars were rapid increases in expenditures for Medicaid and criminal justice programs. Between 1991 and 1995, state spending for Medicaid and criminal justice programs increased 117 and 135 percent respectively.

The measure passed by the legislature and approved by the supreme court has several key features. It (1) creates greater equality in property wealth among districts; (2) sets limits on local property tax rates; and (3) provides supplemental state funding for less wealthy districts to equalize the revenue received on their local taxes.

Part of Wealthy Districts' Property Wealth Transferred to Less Wealthy Districts

The new mechanism in SB 7 that sets it apart from the other funding systems rejected by the court is a recapture provision that creates greater equality in property wealth among districts. This provision was enacted because other options for closing the gap in spending between the wealthy and less wealthy districts were limited, according to several people we interviewed. Politically, they said, the state could not pursue consolidation and, financially, it could not raise the level of poor districts' spending to that of wealthy districts. Because of the vast disparities in property wealth, the estimated cost of the latter option was four times the amount of the entire state budget.

The new provision, which took effect in 1993, required districts with property wealth exceeding $280,000 per pupil to reduce their taxable wealth to no more than that amount. Districts had five options for doing so: (1) consolidating with another district or districts, (2) transferring property to a poor district for taxation purposes, (3) purchasing attendance credits from the state (in effect, writing a check to the state), (4) contracting with another district to educate some of their students (in effect, writing a check to the district), or (5) creating a taxing district by consolidating the tax base with one or more other districts.

This provision affected 90 of the state's 1,046 school districts in the 1993–94 school year. Collectively, these districts had to reduce their property wealth using one or more of the options, resulting in the recapture of more than $430 million in local property tax. Of these 90 districts, none used options one, two, or 5; 61 used option three, 22 used option four, and seven used a combination of options three and four.

SB 7 included a provision that allowed some of these districts to retain a greater amount of taxable wealth for the next several years. The provision, which expires in 1996,[M1] permits wealthy districts to maintain their spending at 1992–93 levels and to retain enough property wealth to do so, subject to certain limitations.[M2] This provision was included out of concern that rapid reductions could harm student programs, according to a state official.

[M1] This provision was modified in the 1995 legislative session. The hold-harmless provision was extended until 1998 for districts that select either option 2 or 3; for districts that select options 1, 4, or 5, the provision expires in 1996.

[M2] Districts were allowed to retain the property wealth needed to produce 1992–93 spending at a tax rate of $1.375 per $100 of property value in 1993–94 and $1.50 through 1995–96.

Caps Placed on Property Tax Rates

To limit further the spending of the wealthy districts, SB 7 capped school property tax rates at $1.50 per $100 of property value for all districts. Districts may call elections to increase the $1.50 limit by local voter authorization to no more than $2.00 for bonds and debt service.[M3]

Level of State Support Linked to Revenue-Raising Ability and Tax Effort

Texas distributes state funds for public education through a two-tiered system of formulas known as the foundation school program. Tier I, a foundation formula, provides funds for meeting the state's basic education requirement. All districts are eligible to participate if they levy a property tax of at least 86 cents per $100 of property value.[M4] Tier II funding is designed to provide additional funds to enrich the basic foundation program and to offset the wealth of wealthy districts. Under the provisions of SB 7, participation in tier II funding is limited to districts with per pupil property wealth below $210,000.[M5] These districts can receive tier II funding if they set their property tax rates above the level required for tier I funding—between 86 cents and the maximum of $1.50 per $100 of property value.

Under this arrangement, less wealthy districts willing to tax themselves at higher rates will receive more state aid. Districts with per pupil wealth above $210,000, which can raise more revenue with equal tax effort than their counterpart districts below this level of per pupil wealth, are not eligible to receive tier II aid. Districts with per pupil wealth below $210,000 receive tier II aid in direct proportion to the degree to which they are willing to raise their own tax rates.

More Equitable Funding and Greater Taxpayer Equity Cited as Successful Outcomes

State officials, former legislators, education advocates and others we interviewed were unanimous in saying that the new system had greatly improved equity. They noted that compromises had to be made to increase the level of funding available to poor districts while not forcing school district consolidation across the state, but they said that the amount of progress towards greater equity had been substantial. For example, when the new system is fully implemented in 1999, the portion of unequalized revenue in the system will have decreased from nearly 21 percent of all state and local revenues in 1989 to less than 2 percent.[M6]

Our interviewees regarded greater taxpayer equity as a significant outcome of the new system. Under the system in place in 1989, wealthy districts were able to raise large amounts of money at a low tax rate whereas less wealthy districts—even if they were taxing themselves at a much higher rates—could not raise the funds needed to provide an education program that met basic requirements. Respondents pointed to evidence that the new system's limitations on revenue raised through the property tax in wealthy districts, and rewards to less wealthy districts for revenue raised through tax effort, were affecting that disparity. For example, in 1989 more than 69 percent

[M3] The 1995 Texas State Legislature modified this limitation so that the $1.50/$100 property value tax limit is for maintenance and operations with the additional $.50 for servicing debt on bonds with the approval of the voters. The prior law limited both maintenance and operations and debt service to $1.50.

[M4] It has also been reported that Texas had made considerable progress in reducing the variation in per pupil spending among school districts before enactment of the school finance system embodied in SB 7, particularly in the years 1988–89 to 1992–93. See Lawrence O. Picus, "Texas School Finance Equity After Edgewood," The Finance Center of the Consortium for Policy Research in Education, August 1995.

[M5] In 1995, the state legislature increased the per pupil property wealth ceiling for tier II participation from $205,500 to $210,000.

[M6] It has also been reported that Texas had made considerable progress in reducing the variation in per pupil spending among school districts before enactment of the school finance system embodied in SB 7, particularly in the years 1988–89 to 1992–93. See Lawrence O. Picus, "Texas School Finance Equity After Edgewood," The Finance Center of the Consortium for Policy Research in Education, August 1995.

of the disparity among districts in per pupil revenue was due to differences in property values; by 1999, when the system has been fully implemented, almost 77 percent of the disparity will be due to differences in tax effort, according to estimates.

Officials Express Concerns That Inequities in State School Finance System Could Reemerge

While our interviewees cited accomplishments under the new system, they also collectively identified four concerns about inequities in the school finance system reemerging: (1) the continued heavy reliance on local property taxes, (2) wealthy districts' concerns about sharing their wealth, (3) less wealthy districts' concerns about continued differences in per pupil spending, and (4) districts' inability to meet rising costs.

Continued Reliance on Property Taxes

The Texas school finance system continues to rely on the local property tax for more than half of its total revenue—and under SB 7, local property taxes have increased. Wealthy districts have had to increase their property tax rates to offset the loss of state aid and maintain spending levels. In addition, many less wealthy districts have also increased their taxes because, under the tier II formula, the state rewards less wealthy districts that raise property taxes by increasing their state aid. Between 1990 and 1994, the effective property tax rate statewide had increased more than 43 percent, from 96 cents per $100 of property wealth to $1.38. In 1994, 94 percent of the districts had a total effective tax rate that exceeded $1.00 per $100 of property wealth.

Almost all of those interviewed said that the new system had been designed to rely on the local property tax for most of its revenue to limit state government's costs. However, most officials expressed concerns about the state's reliance on the local property tax for such a large part of public education and said that they were concerned about a public effort to roll back tax rates in the future. In addition, in the fast-growing districts funds needed to build schools are competing with funds needed to improve education programs, which decreases educational opportunity, according to an education advocate.

Wealthy Districts' Concerns About Sharing Taxable Wealth

Wealthy districts are dissatisfied with this new system and have pressured the legislature to make changes, according to state officials and education advocates. For example, in 1995 the legislature changed the provision that requires wealthy districts to reduce their taxable wealth. Under this change, those districts that write a check to that state (option three) may reduce their costs through a discount and extend the hold-harmless provision for an additional two years.[M7] In addition, the state is permitting wealthy districts to retain the money paid for appraising their district's property when such an appraisal is required to meet the recapture clause provisions. Continued pressure on the legislature to make changes that benefit the wealthy districts contradicts state efforts to improve equity between the wealthy and less wealthy districts.

Less Wealthy Districts' Concerns About Continued Differences in Per Pupil Spending

Officials also noted that the new system did not bring something that poor districts had wanted—equality with wealthy districts in per pupil spending. Once the system is fully implemented in

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[M7] The reason for this change is that if the state collects the funds from the wealthy districts, rather than gives the funds directly to less wealthy districts through another option, it provides an estimated additional $35 million to allocate to districts throughout the state, according to a state official.

> 1999, it will permit wealthy districts to spend about $600 more per weighted pupil than less wealthy districts. The state supreme court indicated in its first ruling that although substantially equal yield for similar tax effort was required to meet the test of efficiency, a per capita distribution or equal spending per pupil was not. Despite the court ruling, however, the expected disparity in spending may be too much, according to some education advocates. Given that $600 per pupil is a significant difference (for example, it equals $15,000 per 25-student classroom), it could give students in wealthy districts an advantage in financing educational opportunities.
>
> **Less Wealthy Districts' Inability to Meet Rising Costs**
>
> The effect of Texas' school finance system has been to provide more revenue for less wealthy districts while limiting the amount of revenue available to wealthy districts. Most officials said that they thought that the new system is achieving its goal—greater equity and more revenue for less wealthy districts. However, they also said that they have concerns about the system because of the statutory tax rate ceiling. As more school districts reach the $1.50 ceiling, their ability to increase spending to meet increased costs will be severely limited unless the state provides additional funding or the tax ceiling is raised.[M8] This current tax rate could be particularly burdensome for fast-growing districts with large numbers of minority and economically disadvantaged students. At issue is whether these districts will be able to fund the costly services needed to meet students' needs. For example, in 1994, of the more than 445,000 students in the 123 districts with the lowest per pupil property wealth, 80 percent were minority students, 24 percent participated in bilingual programs, and almost 70 percent were economically disadvantaged.

The findings of the GAO study were reported in the May 7, 1996, issue of the *San Antonio Express-News*.[153] The article states that ". . . after an exhausting court fight stemming from decades of wrenching inequality, Texas has developed one of the country's most equitable school finance programs, according to U.S. General Accounting Office researchers who used the state as one of three case studies in a recent report to Congress."

The "most equitable" status of the Texas system still leaves much to be desired. The newspaper article presents the downside of the status:

> Even when fully implemented in 1999, Texas' latest school finance system still will allow rich districts to spend $600 a year more on each child than poor districts. That gap, $15,000 for a 25-student classroom, is manifested in everything from technology to curriculum materials to numbers of librarians, educators say.

In the article, Craig Foster from the Equity Center in Texas, states that "The fact is, the state of equity in the United States is so pathetic that we [Texas] look good." He prefaces this conclusion with the observation, "It's like winning a beauty contest when all the other contestants are ugly."

EQUITY SAMPLE ANALYSIS

The impact of recent school finance reform legislation can be demonstrated by a study of Bexar County's 12 school districts. Three additional military districts in the county were not included in the study because of the absence of taxable property and school taxes. Although the number of districts sampled is small and it is difficult to generalize for the entire state, these data are relevant because Bexar County districts provide a wide range of wealth with districts located at the various intervals in the wealth continuum, from very high wealth in the Alamo Heights district, to very low in the Edgewood district.

[M8] The 1995 legislature changed the system to (1) increase the per pupil basic allotment from $2,300 to $2,387, (2) increase the property wealth for tier II participation from $205,500 to $210,000, and (3) modify the $1.50/$100 property wealth tax ceiling so that in effect the ceiling is increased, according to a state official.

The findings, based on the 1994–95 school year, were derived from the Texas Education Agency publication, *Snapshot '95*,[154] and are presented below:

BEXAR COUNTY SCHOOL DISTRICTS
SELECTED DATA—1994–95

(A)	*(B)*	*(C)*	*(D)*	*(E)*	*(F)*
District	*MV/ADA*	*PPE*	*Eq Tax*	*% Eco Dis*	*TeaTO*
Alamo Heights	$416,950	$5,227	$1.490	23.5%	10.1
East Central	101,177	4,269	1.480	42.8	12.4
Edgewood	34,363	5,673	1.485	93.2	15.1
Harlandale	44,262	5,120	1.853	77.4	12.0
Judson	135,117	4,172	1.427	38.2	10.3
North East	224,899	4,444	1.411	33.5	10.0
Northside	159,853	4,213	1.417	38.8	11.2
San Antonio	95,953	5,239	1.553	92.9	7.4
Somerset	39,936	3,724	1.850	74.3	22.2
South San	50,694	5,407	1.560	86.4	8.0
Southside	43,662	4,846	1.540	80.7	14.1
Southwest	40,942	4,750	1.355	72.0	16.6

(B) MV/ADA = 1994 Taxable wealth per 1994–95 pupil
(C) PPE = Total Operating Expenditures per pupil, 1994–95
(D) Eq Tax = Sum of M&O and Debt Service effective tax rate
(E) % Eco Dis = Percent of economically disadvantaged students
(F) TeaTO = Percent of 93–94 teachers not employed in 1994–95
Source: Texas Education Agency, *Snapshot '95*, Austin, 1996.

The data from the table above indicate drastic changes in school funding. Neither Alamo Heights with a market value of $416,950 per pupil, nor North East as the only other Bexar County district above the state average in wealth, have the highest per pupil expenditure in the county. Ironically, this distinction goes to the Edgewood School District, mostly because of having the highest percentage of economically disadvantaged, minority and limited English proficient students. The high expenditure rate is a factor of the weighted pupil formula enacted during the reform period.

The "Texas Tax Paradox" of high wealth-low taxation-high yield and low wealth-high taxation-low yield no longer appears to hold true in Bexar County. The only apparent exception in the table is the Somerset school district which has an exceptionally high tax rate with an exceptionally low per pupil expenditure rate, but this exception can be easily explained by the excessive amount of the tax rate (more than 43 percent) being dedicated to debt service.

Column E (percent economically disadvantaged) indicates a continued overabundance of such children in the low wealth districts. During the *Edgewood* litigation, the Alamo Heights District superintendent made frequent mention of the fact that the district was comprised of almost 25 percent economically disadvantaged students, yet the Edgewood District percentage (93.2 percent) is almost four times higher than that of Alamo Heights.

The diminution of teacher turnover is a welcome finding that can be attributed to the school finance reform effort. The 34 percent teacher turnover rate in 1969 when I became superintendent of the school district has been diminished to less than one-half. Considering that all school districts have an average turnover rate of about 10 percent, which is attributed to dropping out of the profession, retirement, mortality and relocation, the turnover rates in low wealth districts seem impressive, considering that these low wealth districts still afford inadequate and sometimes deplorable school facilities. The continued high teacher turnover rate in the Somerset district may be attributed to its distance from the available labor pool. Somerset is a district located in the county furthest away from the city of San Antonio, where most of the teachers reside.

Two statistical analyses were conducted on the data in this table, Pearson Product-Moment coefficients of correlation and an analysis of variance. The correlations among the variables are presented below:

PEARSON PRODUCT-MOMENT CORRELATIONS

	PPE	*EQTAX*	*% ECO*	*ea TO*
MV/ADA	−.001	−.3293	−.7902	−.4022
PPE		−.0546	.4836	−.4241
EQTAX			.4082	.3660
% ECO				.2132

The correlations derived and presented above provide some tentative conclusions about the impact of the school finance reform effort in Bexar County.

Although not directly related to the study of the impact of school finance reform, it is interesting to note that in 1994–95, there is still a high correlation between district wealth and the percentage of economically disadvantaged students. The negative .7902 coefficient indicates that in Bexar County, economically disadvantaged students tend to attend schools in districts with low property tax values. This finding is still consistent with the findings of the Brischetto studies in the early 1970s.

Similarly, the moderate correlation between district wealth and teacher turnover rates (−.4022) indicates a stronger tendency for teachers to stay in high wealth districts. This moderate tendency may be attributed to the more adequate facilities in high wealth districts due to an improper or non-existent facilities equalization effort, which has never been adequately addressed in school finance reform efforts in Texas, or it could be simply attributed to the social prestige of teaching middle and upper class children.

The correlation between the percentage of economically disadvantaged students and district tax rates (.4082) indicates that the Texas tradition of the economically disadvantaged paying higher taxes is still with us regardless of the reform legislation.

The moderate correlation between per pupil expenditures and teacher turnover rates (−.4241) indicates a moderate tendency for teacher work forces to be more stable in higher expending districts. Although this correlation is only moderate, it does denote a higher correlation than the district wealth, tax rate and percentage disadvantaged variables.

Pertinent to the assessment of the impact of reform legislation is the absolute lack of correlation between district wealth and per pupil expenditures (−.001). Whereas these two variables had a moderate to high correlation prior to the reform effort (the correlation was .6410 in 1976), it is surprising to see its absence in this analysis.

Variations in per pupil expenditures correlate much higher with the percentage of economically disadvantaged students, a result of the use of a weighted student factor in the foundation school program.

Given that a sampling of 12 in such a study is always suspect, multiple regression analysis on these data coincide with the correlations presented above. Per pupil expenditure is very much a factor of the equalized tax rate and the percentage of economically disadvantaged students, with district wealth showing little impact.

EDUCATIONAL RESOURCES SURVEY

A further determination of the status of school finance reform in Texas was made by an educational resources survey, a "then and now" comparison provided by Dr. Dolores Muñoz, the current superintendent of the Edgewood Independent School District. Excerpts from Chapter One in which I described the deplorable conditions I experienced as teacher, principal and superintendent in Edgewood from 1953 to 1973 were made available to Dr. Muñoz, and she contrasted these descriptions with current conditions in the school district.

Whereas there were no instructional supplies and few instructional materials available to me as a teacher, Dr. Muñoz describes the current availability of such resources as "very adequate." The same is true for science materials and equipment, with $380,000 being budgeted for replacement materials in 1996–97. This amount budgeted was determined by the site-based management group on each campus.

The staffing patterns have undergone similar change. As described in Chapter One, from 1958 to 1961, I served as principal in an Edgewood elementary school with 1,200 students, and I did not have a single professional employee without a full-time teaching assignment. This year the typical elementary school in Edgewood enrolling an average of 600 students will have seven or eight support staff members plus five special education and resource teachers. Support staff included two or three clerical workers, a full-time nurse, a full-time counselor, two assistant administrators and a full-time librarian. The normal allocation of teachers is supplemented by three special education and two resource teachers.

The state minimum salary schedule is supplemented by an average annual supplement of $4,328. Fringe benefits provided at district expense include health insurance, dental insurance, workmen's compensation and sick and personal leave days. Only 7 percent of the teachers lack teacher education requirements, there are no non-degree teachers, and no teachers teaching outside their appropriate teaching field. This is a vast change from 1969 when over 50 percent of the instructional staff failed to meet certification requirements, most of them without a college degree. Superintendent Muñoz estimates the teacher turnover rate for the end of the 1995–96 school year will have dropped to 7 percent.

$2,600,517 was budgeted and spent in the training of teachers in 1995–96, with almost half of this amount coming from local funds. This high amount for teacher training is necessary because of the high incidence of atypical students in the district—economically disadvantaged, minority, limited English proficient, migrant and immigrant children—the types of students which teacher training institutions are still doing little to prepare future teachers to teach.

The curriculum has similarly gone through a drastic change. Calculus, geometry, physics, microbiology, world history, economics and creative writing are now taught in each of the district's high schools. An estimated 27.3 percent of the students are limited English proficient, with 90.5 percent of the eligible students participating in a bilingual or a special English-as-a-Second Language program. Coaches and co-curricular activity sponsors now receive a special financial supplement in keeping with overtime work in these activities.

I mentioned in Chapter One that as a school principal it was necessary for me to arrive early in order to assist janitorial staff in the lighting of classroom heaters. At the present time, all schools in the district have automatic heating systems. All of the district's classrooms are air conditioned.

It is impossible for the district to determine the extent to which non-instructional needs of children are being met, but the attendance rate of about 94 percent indicates a vast improvement.

Community participation in school affairs is rated as "good," and about 42 percent of school staff can communicate with parents in a language other than English.

Although the superintendent has seen a significant improvement in educational opportunities for the students, she still sees the impact of school finance reform as limited. Providing adequate physical facilities, furniture and equipment is still a major problem. Improvement has been significant; equity is still to be achieved.

The extensive increase in equity is not an indication that everyone is satisfied with the status of school finance. On the contrary, limitations on enrichment funding continues to be unacceptable in high wealth districts, and the elusiveness of complete equalization is still unacceptable in low wealth districts. Perhaps no one is satisfied with the status of the system, but until one side or the other initiates further action, it remains the best in the history of the state.

FACILITIES FUNDING

IDRA still advocates for increased equity in facilities funding. Dr. Albert Cortez identifies this need in the May 1994 issue of the *Newsletter:*[155]

> Twenty-five years after the historic *Rodriguez v. San Antonio ISD* federal court challenge of the Texas public school funding system, the state finds itself struggling with the question of how best to equalize access to school facilities revenue. In the latest *Edgewood v. Meno* ruling, the state court gives the Texas Legislature until September 1, 1995, to develop a plan. Lt. Gov. Bob Bullock, anticipating the need for State Senate action, appointed an Interim Committee on School Facilities. The Committee

chairperson is Sen. Teel Bivens of Amarillo; he is joined by Sen. Ratliff, chairperson of the Senate Education Committee, and Sen. John Montford of Lubbock, who also sits on the Senate Education Committee and chairs the powerful Senate Finance Committee. The charge to the committee includes "studying and making recommendations regarding the state's participation in the funding of public school facilities."

What's the problem? Although the state of Texas has long supported the operation of public school programs, it has never participated in helping local school districts cover the cost of building or furnishing school facilities. Historically, Texas schools have financed land acquisition and school construction capital outlay through bonds, the sale of which must be approved by a majority of voters in local bond elections.

The state's failure to provide direct funding for facilities has created serious inequities in the revenues available to local school districts for school construction and major disparities in the quality of school facilities found in the state's property poor and property wealthy districts. These disparities are a result of the great differences in the property tax bases available to school systems, the revenue base which is used to generate funding for local facilities. The state argued that it did provide indirect support for school facilities by including debt service tax effort in the State Guaranteed Yield Formulas (where the state provides some degree of equalized funding to make up for the differing capacity of local districts to raise equal amounts of property tax revenue for each cent of local tax effort). Property poor districts pointed out, however, that failure to directly finance and equalize facilities forces them to choose between allocating guaranteed yield monies for instructional programs *or* local school facilities. The court agreed with the low wealth districts' position and directed the legislature to develop a plan for equalized facilities funding. Following its earlier pattern, the court did not dictate any specifics on how its latest mandate needed to be addressed.

In the 1991 legislative session, state legislators passed a bill requiring the state agency to conduct a study of school facilities in Texas. Additionally, the agency was directed to: (1) develop standards for the construction of new facilities; and (2) form an advisory committee to assist in the development of policy (related to school facilities) and debt service. In 1993, the legislature appropriated $5 million to support implementation of a statewide inventory on school facilities which included a system for rating relative conditions in each of Texas' 6,000+ public schools. (The 1992 Texas Education Agency report on school facilities was completed by the Division of Resource Planning and Reports and presented to the legislature in May of 1992. Included were the rationale for the facilities study, a review of facilities programs operated in other states, procedures used to collect the data and to determine school funding needs and costs related to addressing those needs, reviews of past state efforts and a presentation of options for addressing facilities funding.)

Among the options presented were: (1) funding on a per pupil basis, providing facilities funding through a formula which guarantees a certain level of revenue for each cent of tax effort; (2) funding on a local project-specific basis; or (3) using combinations of different funding approaches. Struggling to find an acceptable response to the earlier *Edgewood* challenges and reluctant to confront the additional funding needs inherent in a state facilities funding plan, the legislature opted to provide a bandaid $50 million emergency facility grants program in 1991 and essentially ignored the issue in its 1993 school funding package.

Despite a long-standing reluctance to address the facilities funding question, the legislature seems poised (albeit, as a result of court pressure) to deal with the issue in the forthcoming session, presuming that the Supreme Court will uphold the district court mandate that this issue be resolved. While it is too early to speculate on what the legislature may propose, IDRA has long held that any proposal dealing with facilities must include four factors:

- Adjustments to equalize the differing property tax bases of school districts;
- Adjustments that take into account a district's existing facilities-related debt;
- Adjustments that take into account the age and condition of local facilities; and
- Adjustments that recognize rapid growth in student enrollment in local districts.

> **Conclusion:** Although it is too early to predict outcomes, one may anticipate that some members of the legislature will be reluctant to allocate significant amounts of revenue for facilities, given the state's overall revenue position. For this reason, it may not be surprising to see the emergence of plans that propose the provisions of long-term bonds to help finance local school construction, with the possible incorporation of state assumption of some repayment costs based on district property wealth. Whether such strategies will be acceptable to the various educational interest groups or to the courts remains to be seen. Whatever proposals emerge, facilities funding promises to surface as a major issue in the 1995 session.

For once, Dr. Cortez' predictions failed to materialize. Although the legislature increased appropriations for capital outlay, for the first time in 25 years, school finance was not the dominant issue in the Texas Legislature.

INTRA-DISTRICT EQUITY

In Texas, the school finance reform effort has focused on expenditure disparities between districts. It is naive to assume that similar disparities do not exist within school districts. From personal experience as well as studies of race, ethnic and gender equity I suspect large discrepancies in funds available in the various sectors of large, urban school districts.

Peter Roos, an attorney formerly with MALDEF and now head of a national equity group, Multi-Cultural Education Training and Advocacy, Inc. (META), and other attorneys for MALDEF and the Legal Aid Foundation of Los Angeles, the Western Center on Law and Poverty, the ACLU Foundation of Southern California and the San Fernando Valley Legal Services filed suit against the Los Angeles Unified School District charging that the district discriminates by the disproportionate assignment of low paid, inexperienced and under-credentialed teachers to the predominantly African American and Hispanic schools. Attorneys also alleged a significant difference in the quality of physical facilities in Los Angeles minority schools. When I was asked to provide technical assistance in the lawsuit, Peter Roos quickly pointed out the irony of the suit being titled, "*Rodriguez v. Los Angeles Unified School District.*" Perhaps it was not all coincidence that the first named plaintiff shared the same last name as in the infamous Texas federal case.

Parents are often interested in obtaining the best educational opportunity for their children. This is not an undesirable attitude. I too have attempted to obtain better educational opportunities for my own children. But when parents attempt to obtain better educational opportunities for their children *at the expense of somebody else's children,* it creates a social, moral, legal and political problem.

Texas has gone through a long era of attempting to rectify an inequity problem created by persons who obtained superior educational opportunities for their children at the expense of other children's education and at the expense of other parents' tax effort. The diminishing of this privileged position by the use of the Equal Protection Clause in the *Edgewood* litigation will probably result in an attempt by the privileged class to seek other ways of perpetuating their privileged position. Intra-district disparities offers such an opportunity. Since the courts and subsequent legislative action have reduced the opportunity for the privileged to attain superior educational opportunities for their children at the expense of children in other school districts, attempts will be made to attain the same superior educational opportunities at the expense of other children in the same school district.

Perhaps the symptoms of such a move are already with us. I note the trend toward block grants to school districts for meeting the special needs of a large variety of students. Wide local discretion is provided for the expenditure of these mixed funds. Past experience indicates extensive local competition for these funds, but the students with the most needs are also the students with the least political clout and ability to access these funds. Therefore they have received the least in the past and will continue to receive the least in the future. I can't forget the long line of school superintendents testifying that the proposed requirement that bilingual education funds be used for limited English proficient children created an inconvenience to the district since bilingual funds had consistently been used for other non-bilingual purposes. Will the return of local discretion again result in earmarked funds for needy students being used for other purposes?

I also note in a report by the Legislative Budget Board unusual increases in the number of students in higher funded Career and Technology programs. Is student participation in these programs a cross section of the student population, or is it becoming the domain of an elitist population?

Similar inquiry should be made of the Gifted and Talented programs, programs that IDRA has always supported. Yet we note that the number of students currently enrolled in these programs has already grown by 37 percent over funding estimates. Actual expenditures in these programs are already 352 percent higher than the legislative allotment. What kind of students are participating in the Gifted and Talented programs? Where are the funds in excess of the allotment coming from? Are children not identified as gifted or talented being shortchanged by funds from their basic foundation program being used to subsidize a special program for special children?

Are inter-district disparities already being replaced by intra-district disparities?

The answers to these questions are unknown, but then, the questions haven't even been asked. For many years, intra-district inequities have taken second priority to inter-district inequities, and IDRA staff have patiently waited for the resolution of the first priority before undertaking the second effort. The immediate future should see the beginning of an IDRA research effort to determine if there are significant differences in financial and other educational resources within school districts. Students being shortchanged by the local system is not much different from being shortchanged by the state system.

LESSONS LEARNED

In May 1994, I recapitulated my 25-year involvement in school finance reform in an article, "Historical Perspectives on Texas School Finance." [156] In this article I list the six most valuable lessons learned during this period and their importance in a new attempt to move school finance equity from its stalled and incomplete status, particularly in the continued need for an equitable system of funding school facilities:

> Between now and September 1, 1995, Texas will find itself in the grip of a new crisis in school finance. The January 26, 1995, court order in *Edgewood v. Meno* demands the development of an equitable system for the provision of funds for school facilities, which parallels a past court order for equity in the maintenance and operation of the schools.
>
> The history of school finance in Texas is replete with similar crises. George Santayana, the American philosopher, said it all when he observed that people ignorant of history were doomed to repeat the mistakes of the past.
>
> A review of historical events in the continuing saga of school finance reform in Texas provides half a dozen lessons that could be of help in addressing the new crisis in facilities funding, as well as future efforts in the financing of our public schools. The following six lessons emerge from items from IDRA files:
>
> 1. The problem is not a new problem. The problem in the financing of Texas schools was a deficiency in the enactment of the Gilmer-Aiken legislation in 1949. By 1968, the Governor's Committee on Public School Finance (COPSE) called for immediate attention to the problem. The original *Rodriguez* decision in 1971 brought the problem to a head, but a solution was deferred with the Supreme Court reversal in 1973. Since then, school finance reform has been the highest priority and the least successful issue during each session of the Texas Legislature and the many special sessions in between.
>
>   The current crisis is not a new one. It is a new manifestation of a crisis that has been around for more than 25 consecutive years.
> 2. During this 25 year period the financing of Texas schools has been consistently inequitable and inadequate.
> 3. There has been no shortage of alternatives available to the educational and political leadership of the state.
> 4. The failure to resolve the problem can be attributed primarily to the failure of the

legislature to bite the bullet and do what decency, justice, common sense and the best interests of the state demand that be done.

Instead, the legislature has squandered time and resources in inaction, postponement, studies, expensive bandaids and the enactment of emasculating "save-harmless" provisions which have perpetuated the problem.

5. Politically popular positions, such as "NO NEW STATE TAXES," have only succeeded in passing the buck to communities which can least afford an additional and inequitable tax burden.
6. Funds for school facilities should have been a part of the reform effort since its beginning.

EDUCATIONAL STATUS

What started out in the 1960s as a quest for equal rights and justice became a national economic imperative. During this period, the economic base of the state and country underwent a dramatic evolution from agriculture, minerals and heavy industry, to information, services and technology. Unfortunately, the educational system is lagging far behind in the creation of a work force capable of meeting the new skilled labor needs of the economy. The drive for equal educational opportunities to provide social and economic mobility for all segments of the population has been augmented with the need for state and national economic survival. The failure of the educational system to produce a skilled worker is not only a personal loss for the underperforming student, it is an unaffordable resource loss for the community, the state and the country. In addition, it becomes a social and economic liability for everyone.

IDRA's pioneering work in school dropouts in 1986 not only substantiated our suspicions that extensive valuable and necessary personnel resources were being lost during the schooling years, it also documented the consequent high costs to the state in government services. The 1986 *Texas School Dropout Survey* conducted by Dr. Maria Robledo Montecel and other IDRA staff,[157] documented that it cost the state in necessary services nine times what it would have cost to provide a successful education for the one-third of the students leaving school prior to graduation.[158]

I do not naively believe that the more equitable distribution of funds will automatically lead to the improved performance of students in the low wealth districts. I have often stated that if the low wealth districts expended their newly acquired funds in the same programs, personnel and resources provided prior to the reform effort, the 25-year struggle would prove to be useless. On the other hand, it is impossible to bring about educational reform in the absence of adequate financial resources. The financial reform effort must move hand-in-hand with the educational reform effort. This complementary relationship has been present during the entire period of TEE/IDRA involvement in the expansion of educational opportunities for students. The extensive IDRA involvement in school finance reform presented in this publication has been matched with an equally extensive involvement in responding to the needs of atypical students through a wide variety of programmatic efforts, ranging from desegregation to math, science and technology challenges for Hispanic girls.

After years of study and research, we have come to the conclusion that the poor educational performance of large segments of the school population—the minorities, disadvantaged, limited English proficient, females, immigrants and migrants—can be improved dramatically. It has been done in IDRA programs in multicultural, bilingual, compensatory, early childhood and math, science and technology education. Poor performance has been eliminated in our Valued Youth Dropout Prevention Program. Nor has IDRA been alone in this accomplishment. Scores of special and pilot test programs by schools and other entities have led to more than successful school performance by segments of the school population commonly seen as uneducable.

The successful, often exemplary, performance of atypical children in special programs can be attributed to three elements not commonly found in the ordinary school programs: the valuing of the students, the provision of necessary support services and unique parent-school-community relationships.

The relationship between these elements and school finance are immediately obvious. If a group of students is so little valued that the state and the educational system assign only a portion of the financial resources assigned to other students, it is impossible for the underfunded students to perceive themselves as being valued by the society. The absence of basic services, let alone the absence of special essential services, precludes the support necessary for successful performance. The absence of resources for parental involvement and parental exclusion from the mainstream of policy formulation and implementation will consistently fail to develop and provide the home support necessary for successful school performance.

PROGRESS AND REGRESSION

It is imperative that Texas continue the movement toward a completely equitable system of school finance. It is equally important that the gains accomplished in the past 25 years not be lost. Texas and other states throughout the country are facing a period of regression which can quickly eliminate the social, political and economic progresses made in the past. Frustration on limitations on personal gain which privileged populations enjoyed in the past have led to a new period of scapegoating and regression. Vested interests with limited foresight and a desire for immediate personal gratification are pushing for scrapping state and national social and economic programs that provide the avenue for self-realization for disenfranchised segments of the population.

Opposition to taxation, government services and equity programs can lead to the elimination of the characteristics that have made our country great. There is a limit to how much one individual can prosper at the expense of another. The systematic dismantling of social programs, including equitable educational programs, can only lead to the loss of the American dream and increased chaos, frustration and antisocial behavior. Regression in educational equity will inevitably lead to the loss of personnel resources, comparable to the lamentable erosion and loss of our natural resources.

With this thought in mind, IDRA has organized a renewed commitment to the concept of equal educational opportunity. In March 1995, IDRA Executive Director Maria "Cuca" Robledo Montecel issued the following declaration of our commitment to the creation of a truly equitable funding system as a requirement for meeting the needs of children.[159] The declaration has been endorsed by scores of school systems, civic and professional organizations, legislators and hundreds of individuals similarly committed to educational equity.

DECLARATION: CHILDREN FIRST

On January 30, 1995, the Texas Supreme Court issued a long-awaited ruling on the *Edgewood v. Meno* school funding case. In its ruling, the court stated that "it is apparent from the court's opinions that we have recognized that an efficient system (of public education) does not require equality of access to revenue at all levels . . . The state's duty to provide [school] districts with substantially equal access to revenue applies only to the provision of funding for a general diffusion of knowledge . . . As long as efficiency is maintained [with efficiency defined as supporting a minimum or basic program] it is not unconstitutional for districts to supplement their program with local funds, even if such funds are unmatched [not equalized] by the state . . ."

Advocates for equitable educational opportunities for children are appalled by the Texas Supreme Court's view of the issues presented and respectfully disagree with its position. As eloquently summarized by Justice Spector in her dissenting opinion:

> This case is about a court that has come full circle. Just six years ago, faced with gross inequities in the school financing system, we unanimously decided that every school district must have similar revenues for similar tax effort. Today's cobbled-together opinion rejects that mandate, and instead sanctions dissimilar revenues for similar tax effort. This holding is not based on any matters tried in the district court. Instead, it is based on the *previously rejected* premise that the state's constitutional responsibility is satisfied by providing most school children with the very least, and the favored few with the best that money can buy. Because I believe this doctrine has no place in the field of public education, nor in the jurisprudence of this case, I dissent.

While recognizing that the Texas Supreme Court has the prerogative of issuing legal opinions, it is the prerogative of free citizens to voice their own opinions concerning the acts of political bodies and the soundness of their actions and decisions. Our perspectives on the issue include the following:

- Education is a state responsibility according to Article VII of the Texas Constitution:

  "It shall be the duty of the legislature to make suitable provisions for the support and maintenance of an efficient system of public schools."

  We believe that responsibility includes ensuring access to equitable funding for *all* students attending Texas public schools;
- Our opposition to the court's ruling stems from clear evidence that there remain vast differences in district property wealth and an understanding that these differences will perpetuate gross inequalities in the school taxes and the money available to educate students in property rich and property poor communities;
- We believe that the Texas Supreme Court erred in limiting state responsibility to the provision of an equalized *inferior* education for all students. In her dissenting opinion, Justice Spector stated that the system sanctioned by the decision will allow wealthy districts to expend $6,146 while the poorest districts will have access to only $3,608 at identical tax efforts, amounting to a difference of $50,760 per classroom; and
- We disagree with the court's proposition that unequal taxes for Texas citizens are legally acceptable. According to the record, the state's wealthiest school districts can tax themselves at $1.22 to fund a "basic" educational program while the state's poorest districts must tax themselves at a rate of $1.31 for the same result, a tax disparity of 9 cents.

In contrast to the Texas Supreme Court, we believe that:

- As the district court noted, *all* children are the state's children and thus should have equitable access to educational opportunities;
- The demands of the workplace and skills needed to be full and productive citizens require access to more than a minimum education;
- Justice is not served when the court endorses the concept of superior education for some citizens while relegating others to a so-called "equalized" inferior one, even when the commissioner of education testifies that "our present accreditation criteria at the acceptable level . . . does not match up with what the real world requirements are"; and
- Since local districts are required to provide grounds, buildings, furniture and equipment and since districts are currently required to bear this burden totally on their own, and since the ability to shoulder the load is entirely dependent upon unequal district property tax bases, the legislature has a moral and legal obligation to equitably fund school facilities.

For these reasons we hereby declare that we reject the high court's judgment and remain committed to working for the creation of a truly equitable funding system that provides equitable and high quality educational opportunities for *all Texas students;* one which provides all our citizens with the skills required for them to be full and productive members of our society. We do concur with the majority opinions' closing comment that despite their ruling, *Texas can and must do better.* Justice and morality require it, our economic survival as a state demands it.

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